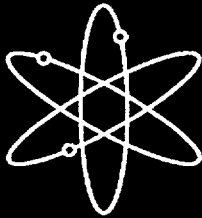
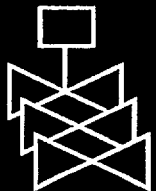


Enforcement Actions: Significant Actions Resolved Individual Actions



**Semiannual Progress Report
July - December 1999**



**U.S. Nuclear Regulatory Commission
Office of Enforcement
Washington, DC 20555-0001**



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Enforcement Actions: Significant Actions Resolved Individual Actions

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NOTICE

NUREG-0940, Enforcement Actions: Significant Actions Resolved, has been published since 1982 to provide NRC-regulated industries and the public with information about the more significant enforcement actions taken by the agency. Recently, the development and widespread use of electronic information dissemination has changed the nature of communicating between federal agencies, their licensees, and the public.

The printed version of NUREG-0940 has been published approximately every six months. Thus, given the time needed to prepare, print, and distribute the document, copies of some actions do not reach licensees and others until 8-9 months after issuance. However, all enforcement actions that are published in NUREG-0940 are now posted on the NRC website, under the Office of Enforcement home page, promptly after issuance. See: www.nrc.gov/OE

Accordingly, the NRC has evaluated the effectiveness of using the resources needed to publish the printed version of NUREG-0940. The NRC has concluded that continuing to publish material in hard copy, when that information is currently and more promptly available electronically, is neither an effective use of resources nor consistent with the Congressional mandate to maximize use of Information Technology and is no longer appropriate. Therefore, this issue is the last that will be issued unless the agency receives significant public comment in favor of continued publication. If you wish to comment, send your views, no later than August 31, 2000, to:

R. W. Borchardt, Director
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Comments may also be sent electronically to: bts@nrc.gov

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ABSTRACT

This compilation summarizes significant enforcement actions that have been resolved during the period (July - December 1999) and includes copies of Orders and Notices of Violation sent by the Nuclear Regulatory Commission to individuals with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC. The Commission believes this information may be useful to licensees in making employment decisions.

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ENFORCEMENT ACTIONS: SIGNIFICANT ACTIONS RESOLVED INDIVIDUAL ACTIONS

July - December 1999

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform all Nuclear Regulatory Commission (NRC) licensees about significant enforcement actions taken against individuals for the last half of 1999. Enforcement actions are issued in accordance with the NRC's Enforcement Policy, published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions."

In promulgating the regulations concerning deliberate misconduct by unlicensed persons (55 FR 40664, August 15, 1991), the Commission directed that a list of all persons who are currently the subject of an order restricting their employment in licensed activities be made available with copies of the Orders. These enforcement actions will be included for each person as long as the actions remain effective. The Commission believes this information may be useful to licensees in making employment decisions.

The NRC publishes significant enforcement actions involving reactor and materials licensees as Parts II and III of NUREG-0940, respectively.

SUMMARIES

A. ORDERS

A. Abdulshafi, Ph.D, P.E. IA 98-058

An Order Prohibiting Involvement in NRC-Licensed Activities was issued March 31, 1999. The action was based on the transfer of six Troxler moisture density gauges containing byproduct material to a person not authorized to possess or use such material. Dr. Abdulshafi is prohibited for one year from engaging in NRC-licensed activities, and must provide written notice to the NRC prior to the first time he engages in licensed activities for a period of five years after the one-year prohibition has ended.

Shashi K. Agarwal, M.D. IA 97-006

An Order Suspending License (Effective Immediately) and Demand for Information was issued September 12, 1996. The action was based on inspections which concluded that Dr. Agarwal repeatedly failed to comply with numerous NRC requirements, provided inaccurate information to the NRC, and failed to cooperate with the NRC or appear for an enforcement conference scheduled to discuss numerous apparent violations identified at his facility. A Settlement Order Terminating License and Prohibiting Involvement in Licensed Activities was issued on January 6, 1997, in which Dr. Agarwal agreed not to be involved or exercise any control over licensed activities within the jurisdiction of the NRC for a period of five years from the date of the settlement agreement.

Randall Allmon IA 98-061

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued January 27, 1999. The action was based on an NRC investigation which concluded that Mr. Allmon, Project Manager for March MetalFab, Inc., deliberately submitted incomplete or inaccurate information. The investigation concluded that Mr. Allmon deliberately made statements to the NRC and the prime contractor that were inaccurate concerning internal welding of a spent fuel cask. The Order prohibits Mr. Allmon from engaging in NRC-licensed activities for a period of five years.

Nash Babcock IA 95-058

An Order was issued December 1, 1995 prohibiting the individual and the companies (Five Star Products, Inc., Construction Products Research, Inc.,) from providing products and services asserted to meet 10 CFR Part 50, Appendix B, or Part 21 requirements until certain provisions specified in the Order are satisfied. The Order was based on Mr. Babcock's and the above companies' refusal to permit NRC inspection of CPR's test facility and the providing of inaccurate and incomplete information to the NRC in violation of 10 CFR 50.5(a)(2). Following issuance of the Order, the companies, the individual and the NRC staff entered a settlement agreement that implemented the Order.

An Order Prohibiting Involvement in NRC-Licensed Activities for a period of five years (Effective Immediately) was issued November 19, 1997 to Finis Scott Brady. The action was based on an inspection and investigation which concluded that the individual deliberately violated 10 CFR 50.5 by: (1) falsifying information to an NRC licensee in 1993 regarding his criminal history to gain unescorted access to the plant; (2) altering copies of court records in 1993 regarding a prior criminal conviction; and (3) making false statements in 1996 regarding his criminal history when questioned by the licensee and an NRC inspector. The Order also requires him for a period of five years following the prohibition period to provide notice to the NRC the first time that he engages in NRC-licensed activities.

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued June 23, 1997 to the above individual. The action was based on an investigation which concluded that the individual deliberately violated 10 CFR 50.5 by submitting false identification on a security questionnaire in order to gain unescorted access to the plant. The individual was working under the assumed name of his deceased brother. The Order prohibits the individual from being involved in licensed activities for a period of five years. Following the five year prohibition, the individual for a period of five years shall provide notice to the NRC the first time on the acceptance of employment involving NRC-licensed activities.

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued May 27, 1997 to the above individual. The action was based on an investigation which concluded that the individual deliberately violated 10 CFR 50.5 by submitting false information as to his criminal history on his personal history questionnaire. The Order prohibits the individual from being involved in licensed activities for a period of five years. Following the five year prohibition, the individual for a period of five years shall provide notice to the NRC the first time on the acceptance of employment involving NRC-licensed activities.

An Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) Pending Further Order was issued July 31, 1997. The action was based on evidence obtained during an investigation which indicated that Dr. Ben-Haim acting in the capacity of consultant to Newark Medical Associates deliberately prepared an inaccurate application for an NRC license. The application listed an individual as sole authorized user and radiation safety officer even though that individual had no knowledge of the application and never agreed to fulfill those functions. An Order Superseding Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) was issued August 27, 1997 after the investigation was completed. The Order was based on deliberate actions by Dr. Ben-Haim that caused the licensee to be in violation of NRC requirements and prohibits Dr. Ben-Haim from being involved in NRC-licensed activities for a period of five years from July 31, 1997. On August 19, 1997, Dr. Ben-Haim challenged the immediately effectiveness of the Order of July 31, 1997 and asked for a

hearing. The Licensing Board ruled on April 26, 1999 reducing from five years to three years the prohibition period.

Sue A. Blacklock

IA 97-059

An Order Prohibiting Involvement in NRC-Licensed Activities was issued August 5, 1997 to the above individual. The action was based on an investigation that determined that the individual deliberately directed falsification of Reactor Cooling Water sample documentation. The Order prohibits the individual from involvement in NRC-licensed activities for a period of 5 years. Following the five year prohibition, the individual for a period of five years shall provide notice to the NRC the first time on the acceptance of employment involving NRC-licensed activities.

John Boschuk, Jr.,

IA 98-019

An Order Prohibiting Involvement in NRC-Licensed Activities was issued April 10, 1998. The action was based on an inspection and investigation which concluded that Mr. Boschuk engaged in a pattern and practice of willfully violating NRC requirements, including unauthorized transfer of byproduct material, inaccurate statements made to the NRC, and destruction of records. The Order prohibited Mr. Boschuk from engaging in NRC-licensed activities for a period of five years. Mr. Boschuk requested a hearing on April 30, 1998, and a settlement was approved dismissing the proceedings on August 5, 1998. The settlement reduced the period of prohibition from five years to two and one-half years and the post notification of the Order was not retained under the settlement agreement.

Lourdes T. Boschuk

IA 98-020

An Order Prohibiting Involvement in NRC-Licensed Activities was issued April 10, 1998. The action was based on an inspection and investigation which concluded that Ms. Boschuk engaged in a pattern and practice of willfully violating NRC requirements, including inaccurate statements made to the NRC and destruction of records. The Order prohibited Ms. Boschuk from engaging in NRC-licensed activities for a period of five years. Ms. Boschuk requested a hearing on April 30, 1998, and a settlement was approved dismissing the proceedings on August 5, 1998. The settlement reduced the period of prohibition from five years to two and one-half years and the post notification of the Order was not retained under the settlement agreement.

Leland H. Brooks

IA 98-024

An Order Prohibiting Involvement in NRC-Licensed Activities was issued July 24, 1998. The action was based on an investigation which concluded that Mr. Brooks deliberately omitted information about his criminal record and failed to provide copies of required court records, in order to gain unescorted plant access. The Order prohibits Mr. Brooks from engaging in NRC-licensed activities for a period of five years. Additionally, for a period of five years after the prohibition period, Mr. Brooks is required to notify the NRC the first time that he engages in NRC-licensed activities.

Sheila N. Burns

IA 98-067

An Order Prohibiting Involvement in NRC-Licensed Activities, Effective Immediately was issued April 29, 1999. The action was based on the individual deciding to continue conducting radiography without a radiation survey instrument after she had indications of a potentially significant radiation exposure, and the individual's decision to provide the licensee with false information about the incident. The Order prohibits involvement in NRC-licensed activities for a period of three years and requires that the individual notify NRC if they elect to return to employment in NRC-licensed activities after the prohibition expires.

James S. Dawson

IA 99-002

An Order Prohibiting Involvement in NRC-Licensed Activities, Effective Immediately was issued April 29, 1999. The action was based on the individual deciding to continue conducting radiography without a radiation survey instrument after he had indications of a potentially significant radiation exposure, and the individual's decision to provide the licensee with false information about the incident. The Order prohibits involvement in NRC-licensed activities for a period of five years and requires that the individual notify NRC if they elect to return to employment in NRC-licensed activities after the prohibition expires.

Magdy Elamir, M.D.

IA 97-064 and 97-070

An Order Prohibiting Involvement in NRC-Licensed Activities and a Demand for Information was issued July 31, 1997. The action was based on evidence obtained during an investigation which indicated that Dr. Elamir, the owner of Newark Medical Associates, deliberately submitted an inaccurate application. The application listed an individual as the sole authorized user and radiation safety officer, even though that individual had no knowledge of the application and had never agreed to fulfill those functions. On September 15, 1997, an Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities was issued. The Order prohibited Dr. Elamir's involvement in NRC-licensed activities for a period of five years from July 31, 1997. On October 4, 1997, Dr. Elamir requested a hearing. On October 1, 1998, a "Joint Motion for Approval of Settlement Agreement" was signed. The settlement agreement reduced the period of time for prohibition of NRC-licensed activities to be reduced to a period of three years, from July 31, 1997 through July 31, 2000. The settlement also included the surrender of license by Newark Medical Associates. The settlement was approved by the ASLB on October 8, 1998.

Mohamed El Naggar

IA 98-059

An Order Prohibiting Involvement in NRC-Licensed Activities was issued March 31, 1999. The action involved the possession of NRC-licensed material without an NRC license. DAS, an NRC licensee failed to pay its annual fee and when the NRC initiated an inspection in June 1998, it was discovered that DAS had sold its physical assets, which included six moisture density gauges, to DGE, which does not have an NRC license, nor is it in an agreement state. Dr. El Naggar was repeatedly informed by one of his employees that DGE was required to have an NRC license to possess the gauges. The Order prohibits Dr. El Naggar from engaging in NRC-licensed activities for

one year and to notify the NRC for a period of one year after the prohibition has expired within 20 days of his acceptance of each employment involving NRC-licensed activities.

Randall G. Falvey

IA 99-049

An Order Prohibiting Involvement in NRC-Licensed Activities was issued October 19, 1999. The action was based on an NRC investigation which concluded that the individual while employed as a contract security training manager, responsible for ensuring weapons used by the security force at the Kewaunee Nuclear Power Plant were test fired annually, the individual deliberately falsified the records for those tests and provided false information to the plant security director. The Order prohibits the individual's involvement in NRC-licensed activities for a period of three years. In addition, subsequent to the three-year period, the Order requires the individual to notify the NRC the first time he accepts employment involving NRC-licensed activities.

Gary Isakoff

IA 98-006

An Order Prohibiting Involvement in NRC-Licensed Activities was issued February 24, 1999 to the above individual. The action was based on an OI investigation which concluded that Mr. Isakoff deliberately falsified a weekly wipe test survey for removable contamination in the hot lab for the week ending September 28, 1996; requested a subordinate technologist to falsely state to regulators that she had conducted the test; fabricated a record of a bar phantom test; and willfully failed to record or inaccurately recorded information pertaining to the administration of doses to patients on dose dispensing forms. The order removes Mr. Isakoff from engaging in NRC-licensed activities for a period of one year. For a period of three years Mr. Isakoff is to inform the NRC staff within 20 days of accepting employment involving NRC-licensed activities.

Mark Jensen

IA 96-042

An Order Prohibiting Involvement in NRC-Licensed Activities was issued July 16, 1996 to the above individual. The Order was based on a violation of 10 CFR 30.10, which caused his former employer to be in violation of NRC requirements by failing to utilize trained and qualified individuals for the conduct of radiographic operations. In addition, the individual attempted to generate a falsified training record for a radiographer. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years, and for a period of five years following the prohibition is required to notify the NRC when he engages in or exercises control over NRC-licensed activities.

David F. Johns

IA 97-026

An Order Prohibiting Involvement in NRC-Licensed Activities was issued May 15, 1997 to the above individual. The Order was based on an inspection and investigation which concluded that the individual, the President of Capital Engineering Services, deliberately violated the conditions of an order suspending CES's license by continuing to use moisture density gauges on numerous occasions. The Order removes the individual from licensed activities for a period of three years, requires the individual, for a period of three years to provide a copy of the order to any prospective employer who engages in NRC-licensed activities, and to notify the NRC the first time the individual is employed in NRC-licensed activities following the three-year prohibition.

An Order Prohibiting Involvement in NRC-Licensed Activities was issued April 28, 1998 to the above individual. The Order was based on an NRC investigation which concluded that the individual violated 10 CFR 50.5(a)(1) by deliberately causing the licensee to violate 10 CFR Part 26 by their involvement in a scheme which altered the computer code intended to assure that individuals are selected for fitness-for-duty testing in a statistically random and unpredictable manner. As a result of the intentional alteration, several individuals were excluded from the random testing. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years. Additionally, for a period of three years after the five years have expired, the individual is required to notify the NRC of his acceptance of each employment offer involving NRC-licensed activities.

William Kimbley IA 95-016
Ms. Joan Kimbley IA 95-015

A Confirmatory Order was issued June 12, 1995 based on an investigation which concluded that Midwest Testing, Inc., through its president, deliberately violated NRC requirements by: (1) allowing operators to use moisture density gauges without personnel monitoring devices, (2) not performing leak tests of two moisture density gauges, (3) not requesting a license amendment to name a new Radiation Protection Officer, (4) storing licensed material at an unauthorized location, and (5) allowing moisture density gauges to be used with an expired license. The investigation also concluded that the licensee's General Manager/Treasurer (the wife of the licensee's president) was involved in the deliberate violations noted in items (1), (2), and (5) above. The Order prohibits both the president and the General Manager/Treasurer, as well as Midwest Testing, Inc. and any successor entity, from applying to the NRC for a license and from engaging in, or controlling, any NRC-licensed activity for a period of five years.

Peter Kint IA 99-001

An Order Prohibiting Involvement in NRC-Licensed Activities was issued March 1, 1999. The Order was based on an inspection which involved a potential overexposure which had occurred during radiographic operations in August 1998. The inspection disclosed that Mr. Kint was not wearing an alarming ratemeter as required. The Order prohibits the individual from engaging in NRC-licensed activities for a period of one year, and to notify the NRC, for a period of one year after the prohibition has expired, within 20 days of his acceptance of each employment involving NRC-licensed activities.

Krishna Kumar IA 97-011

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued February 18, 1997 to the above individual. The Order was based on an inspection and investigation which concluded that the individual, President of Power Inspection, Inc., engaged in deliberate misconduct by deliberately submitting to NRC licensees inaccurate information concerning: 1) eddy current qualification certification examination results and personnel certification summaries, and 2) the trustworthiness and reliability of two individuals, when Mr. Kumar knew that the individuals had used illegal substances. In addition, Mr. Kumar engaged in deliberate misconduct by directing Power Inspection employees to fabricate source utilization logs for radiography

performed and by providing to the NRC a letter which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in a previous NOV. The Order prohibits Mr. Kumar from engaging in NRC-licensed activities for a period of ten years.

Lee LaRocque

IA 98-065

An Order Prohibiting Involvement in NRC-Licensed Activities was issued February 24, 1999. The Order was based on an investigation which concluded that Mr. LaRoque, while employed as a Nuclear Medicine Technologist at Windham Community Memorial Hospital, (1) altered the dose calibrator reading for an iodine-131 capsule, which was to be administered to a patient, (2) administered the capsule containing a dose of I-131 in excess of that authorized by the hospital's NRC license, and (3) created an inaccurate record of that dose. The Order prohibits the individual from engaging in NRC-licensed activities for a period of one year and requires him to notify the NRC, for a period of one year after the prohibition has expired, within 20 days of his acceptance of each employment involving NRC-licensed activities.

John Maas

IA 96-100

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued December 12, 1996, to the above individual. The action was based on an inspection and a plea of guilty in U.S. District Court, in which the staff concluded that the individual deliberately violated the Deliberate Misconduct rule while serving as President of National Circuits Caribe, Inc., by abandoning devices containing byproduct material at the licensee's facility in Puerto Rico. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years. In addition, for a period of five years after the prohibition, he is to provide notice to the NRC of his involvement in NRC-licensed activities. The individual agreed to the action.

Jasen Mallahan

IA 99-047

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued October 22, 1999. The action was based on an NRC inspection and investigation which concluded that the individual deliberately failed to conduct radiography with at least two qualified individuals to observe operations, and failed to supervise a radiographer's assistant while performing radiographic operations. The Order prohibits the individual from engaging in NRC-licensed activities for a period of one year and to notify within 20 days of acceptance of each employment involving NRC-licensed activities for a period of one year following the one-year prohibition.

Julian H. McGriff

IA 97-067

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued February 23, 1998 to the above individual. The action was based on an investigation which determined that between April 1996 and January 1997, the individual deliberately falsified records of inventories of emergency equipment required by the licensee's procedures. The individual is prohibited from involvement in NRC-licensee activities for a period of three years, and is required for a period of one year to notify the NRC of his first involvement in NRC-licensed activities following the prohibition period.

David Milas

IA 98-047

An Order Prohibiting Involvement in NRC-Licensed Activities was issued September 18, 1998. The action was based on an investigation which concluded that Mr. Milas deliberately compromised the integrity of an NRC operator licensing examination by obtaining a photocopy of the NRC examination for his personal use prior to the date that the examination was to be administered. The Order prohibits Mr. Milas from engaging in NRC-licensed activities for a period of five years. Additionally, for a period of five years after the prohibition period, Mr. Milas is required to notify the NRC each time he accepts employment involving NRC-licensed activities.

James Mulkey

IA 97-012

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued February 18, 1997 to the above individual, a former Vice President and Radiation Safety Officer at Power Inspection, Inc. The action was based on an inspection and investigation which concluded that the individual engaged in deliberate misconduct by: 1) submitting inaccurate information concerning eddy current qualification certification examination results and personnel certification summaries; 2) providing to the NRC a letter which contained inaccurate information relating to whether corrective actions had been taken in response to a previous Notice of Violation; and 3) providing false information to the NRC during a telephone discussion with a representative of the NRC. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years, and that if currently engaged in NRC-licensed activities to cease. In addition, the first time the individual engages in NRC-licensed activities following the five year prohibition, he is required to notify the NRC prior to the performance of NRC-licensed activities.

Albert M. Nardslico

IA 98-001

An Order Prohibiting Involvement in NRC-Licensed Activities was issued April 28, 1998 to the above individual. The Order was based on an NRC investigation which concluded that the individual violated 10 CFR 50.5(a)(1) by deliberately causing the licensee to violate 10 CFR Part 26 by his involvement in a scheme which altered the computer code intended to assure that individuals are selected for fitness-for-duty testing in a statistically random and unpredictable manner. As a result of the intentional alteration, several individuals were excluded from the random testing, including the above individual. The Order removes the individual from engaging in NRC-licensed activities for a period of five years. Additionally, for a period of three years after the five years have expired, the individual is required to notify the NRC of his acceptance of each employment offer involving NRC-licensed activities.

James C. Nelson

IA 97-004

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued January 27, 1997 to the above individual. The action was based on deliberate misconduct involving: (1) use of a moisture density gauge after the license had been suspended, (2) supplying inaccurate information as to the Radiation Protection Officer, and (3) failure to have a Radiation Protection Officer for over eight years. The Order prohibits the individual's involvement in NRC-licensed activities for a period of five years.

Steven F. Nevin

IA 97-060

An Order Prohibiting Involvement in NRC-Licensed Activities was issued August 5, 1997 to the above individual. The action was based on an investigation which determined that the individual deliberately falsified records of Reactor Enclosure Cooling Water sample documentation. The Order prohibits the individual's involvement in NRC-licensed activities for a period of three years. In addition, the Order requires, subsequent to the 3-year period, that the NRC be informed the first time of acceptance of employment involving NRC-licensed activities.

Jesus Osorio

IA 96-043

An Order Prohibiting Involvement in NRC-Licensed Activities was issued July 16, 1996 to the above individual. The Order was based on a violation of 10 CFR 30.10, which caused his former employer to be in violation of NRC requirements by failing to utilize trained and qualified individuals for the conduct of radiographic operations, and providing to the NRC materially inaccurate and incomplete information relating to radiographers' training. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years, and for a period of five years following the prohibition is required to notify the NRC when he engages in or exercises control over NRC-licensed activities.

Stanislaw Piorek, Ph.D.

IA 99-037

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 19, 1999. The action was based on an NRC inspection and investigation which concluded that Dr. Piorek engaged in deliberate misconduct which caused the licensee to be in violation of NRC requirements. Specifically, (1) Dr. Piorek deliberately failed to stop unauthorized shipments of x-ray fluorescence analyzer devices, and (2) he deliberately failed to submit quarterly reports to the NRC. The Order requires, in part, that Dr. Piorek not engage in NRC-licensed activities for a period of three years, and that he give no less than five days notice prior to the first time he engages in NRC-licensed activities during a period of five years following the three-year prohibition.

Darrel T. Rich

IA 97-074

An Order Prohibiting Involvement in NRC-Licensed Activities was issued January 5, 1998 to the above individual. The action was based on an investigation which determined that on July 21 and September 15, 1996, that the individual deliberately falsified records of routine radiological surveys required by the licensee's procedures. The Order prohibits the individual's involvement in NRC-licensed activities for a period of three years. In addition, subsequent to the three year period, the Order required the individual to notify the NRC the first time before accepting employment involving NRC-licensed activities.

Brian K. Rogers

IA 98-062

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued on January 27, 1999. The action was based on an NRC investigation which concluded that Mr. Rogers, Quality Assurance Manager for March

Metalfab, Inc., deliberately submitted incomplete or inaccurate information. The investigation concluded that Mr. Rogers deliberately made statements to the NRC and the prime contractor that were inaccurate concerning internal welding of a spent fuel cask. The Order prohibits Mr. Rogers from engaging in NRC-licensed activities for a period of five years.

Richard A. Speciale IA 99-019

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued on July 21, 1999. The action was based on an inspection and investigation which concluded that Mr. Speciale (1) allowed untrained individuals to use moisture density gauges, (2) did not provide these individuals with the necessary dosimetry while they were using the gauges, (3) provided to the NRC inaccurate information concerning the number of gauges possessed and used by the licensee, and the training of gauge users, and (4) while as Director of Testwell Craig, directed the use of gauges even though the license had been suspended for nonpayment of fees, and the license had not been issued for the other company, Special Testing Laboratories. The Order requires that Mr. Speciale not engage in NRC-licensed activities for a period of five years, if he is currently involved in NRC-licensed activities to cease those activities, and for a period of five years after the prohibition has ended to provide notice to the NRC of the employer where he will be involved in NRC-licensed activities.

Derek Stephens IA 97-008

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities was issued April 15, 1997 to the above individual. The action was based on an inspection and investigation which concluded that the individual deliberately violated 10 CFR 30.10 and 10 CFR 34.33(a) by failing to wear personal monitoring devices while conducting radiographic activities and by failing to supervise his assistant as the assistant approached the exposure device without a survey instrument and attempted to disassemble the equipment. The Order removes the individual from engaging in NRC-licensed activities for a period of three years.

Dale Todd IA 98-066

An Order Prohibiting Involvement in NRC-Licensed Activities was issued March 31, 1999. The action was based on the deliberate possession and use of radioactive material in the Commonwealth of Puerto Rico without a specific or general license issued by the NRC in violation of 10 CFR 30.3, 10 CFR 150.20, and 10 CFR 30.10. The Order prohibits Mr. Todd from engaging in NRC-licensed activities for a period of one year and Mr. Todd is required to notify the NRC at least five days prior to the first time that he engages in or exercises control over NRC-licensed activities during a period of five years following the one year prohibition.

John Urban IA 99-053

A Confirmatory Order Requiring Notice to Certain Employers and Prospective Employers and Notification of NRC of Certain Employment in NRC-Licensed Activities (Effective Immediately) was issued November 26, 1999. The action was based on a misadministration involving a patient undergoing treatment for thyroid carcinoma who received approximately 100 millicuries of iodine-131 instead of 150 millicuries as

prescribed. Mr. Urban altered the written directive to reflect what had been given, but did not notify the prescribing physician. Two days later the physician discovered the misadministration when he realized that the written directive had been altered. The Order requires Mr. Urban to notify prospective employers of the Order for a period of two years and to notify NRC of his acceptance of an employment offer involving NRC-licensed activities, within ten days.

Lonnie Randall Wilson

IA 97-050

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued June 27, 1997 to the above individual. The action was based on an investigation that determined that the individual submitted false information on his security questionnaire. The Order removed the individual from NRC-licensed activities for a period of five years. In addition, the Order requires that the individual provide notice to the NRC each time for a period of five years, following the prohibition that the individual engages in NRC-licensed activities.

Marc W. Zuverink

IA 95-022

An Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC was issued June 27, 1995 to the above individual. The action was based on an investigation which determined that the individual stole tritium from the licensee's facility and transferred it to members of the public. The Order prohibits the individual from engaging in NRC-licensed activities for a period of ten years and requires that he provide notice to the NRC for an additional five year period if he becomes involved in NRC-licensed activities.

B. NOTICES OF VIOLATION

Walter T. Anderson

IA 99-046

A Notice of Violation was issued October 1, 1999, based on a confirmed positive test for marijuana following the submission of a urine sample which indicated that the above individual was under the influence of marijuana. Subsequently, the facility licensee allowed his license to expire because of the confirmed positive drug test.

Richard W. Dungan

IA 99-026

A Notice of Violation was issued July 13, 1999, based on an inspection as well as an investigation which determined that the individual deliberately allowed an employee to use a Troxler gauge without the employee (1) having completed the required training program, (2) having been designated as an authorized user by the RSO, (3) being in the presence of an authorized user, and (4) wearing dosimetry during the use of the gauge. An Order was not issued to the individual because (1) the individual admitted during the interview with OI that he made a mistake, (2) he cooperated during the inspection and investigation, and (3) he was counseled and retrained by the company.

Kenneth F. Enoch

IA 99-036

A Notice of Violation for Falsification of Records was issued July 23, 1999, based on an investigation which concluded that the individual deliberately submitted to the licensee

Surveillance Procedure 24.000.03,"Mode 5 Shiftly, Daily, and Weekly Surveillances," that the individual knew were not correct. The individual initialed several items in the surveillance 24.000.03 as satisfactory when, in fact, the security logs demonstrated that the individual did not enter the areas that house the equipment. Additionally, the individual recorded data as satisfactory when, in fact, the licensee demonstrated that the individual spent insufficient time in the area to accomplish the required equipment checks.

Neil Everson

IA 99-031

A Notice of Violation was issued July 20, 1999, based on an investigation which concluded that the individual brought a personal handgun into the personnel search area at the Zion Station. The handgun was detected during the x-ray search of the individual's belongings. The x-ray equipment operator failed to secure the weapon and the individual asked the equipment operator not to report the incident. With assistance from the individual, the equipment operator erased the image of the handgun from the x-ray monitor. An Order was not issued to the individual because (1) the licensee took action regarding the wrongdoing, including removing the individual's unescorted access privileges at the Zion Station, (2) the individual is no longer employed at Zion Station, and (3) upon termination of the individual's employment, the licensee annotated that access to the facility was not terminated favorably.

John R. Godwin

IA 99-060

A Notice of Violation for a Severity Level III violation was issued December 22, 1999. The violation involved a urine sample that contained potassium nitrite, which blocks that ability to detect substances indicating marijuana use through fitness for duty testing. After identification of the individual's intentional and deliberate actions, the licensee took appropriate corrective actions to permanently restrict the individual from TVA work.

Michael Hibbins

IA 99-048

A Notice of Violation was issued October 22, 1999, based on an investigation which concluded that in September 1998, the individual failed to have the radiographer present to terminate the last shot so he cranked in the source, surveyed, and locked the camera which caused the licensee to be in violation of 10 CFR 34.46. Also on the same day, after the last radiographic shot was completed, the individual failed to maintain constant surveillance of the radiographic camera when he left the area to go to the truck. The Notice of Violation was issued to emphasize the importance of compliance with NRC requirements.

Jorge A. Labarraque

IA 99-059

A Notice of Violation was issued December 20, 1999, based on an investigation which identified an apparent violation involving discrimination against the former Manager of Quality Systems at the Paducah facility. The manager of Quality Systems had raised nuclear safety concerns. Subsequently, the individual was transferred from a managerial position to a non-managerial position in the Training Department.

Raymond Landrum

IA 99-052

A Notice of Violation was issued November 3, 1999, based on an investigation which concluded an apparent violation had occurred involving discrimination by the mid-level plant management official against a Senior Reactor Operator for raising nuclear safety issues. The SRO's performance rating was lowered and the SRO's participation in the shift manager qualification was deferred.

Gary Pageau

IA 99-003

A Notice of Violation was issued August 3, 1999, based on an investigation which concluded that (1) the individual discriminated against an electrician for raising safety issues regarding electrical wiring in the control panel for the control building air conditioning, (2) created an inaccurate record regarding work completed on the control building air conditioning, and (3) failed to promptly correct the incorrectly terminated cables on the control building air conditioning. An Order was not issued because the individual was acting supervisor when the discrimination occurred, and a number of the electrical workers indicated that the individual in the past had been supportive of workers raising safety concerns.

Bradley K. Sherwin

IA 99-030

A Notice of Violation was issued July 8, 1999, based on an inspection and an investigation which concluded that the individual provided inaccurate information to the NRC and caused the licensee to be in violation of NRC regulations. The inaccurate information was provided to NRC inspectors regarding a gauge used at a temporary jobsite in Saginaw, Michigan. The individual stated that he returned the gauge to the Lansing office every evening for storage when in fact he stored the gauge at his residence. In addition, an NRC inspector observed the individual leaving a gauge unattended in an unrestricted area at a temporary jobsite.

Ross Stromberg

IA 99-055

A Notice of Violation was issued November 23, 1999, based on an investigation which concluded that the individual deliberately adulterated a urine sample during a random drug screening to avoid detection for illegal drug use. After identification of the individual's actions, the licensee took appropriate corrective actions to deny the individual unescorted access privilege to the facility.

Larry E. Taylor

IA 99-061

A Notice of Violation for a Severity Level III violation was issued December 27, 1999, based on a letter from the licensee which concluded that the individual used an illegal drug - tetrahydrocannabinol (THC) - as evidenced by a confirmed positive test for that drug resulting from a urine sample submitted on October 13, 1999, and the individual performed licensed duties during the week of October 11, 1999, and during this time a urine sample was submitted which indicated he was under the influence of THC. In accordance with 10 CFR 26.27(b), future similar violations will substantially affect the individual's authorization for unescorted access to the protected area of a licensed facility.

Charles H. Tewksbury

IA 99-045

A Notice of Violation was issued September 30, 1999, based on an investigation which concluded that the individual, as a supervisor at the Clinton Station, discriminated against an inspector in retaliation for the inspector's previous discussions with the NRC about safety-related issues. An Order was not issued because the Clinton station took disciplinary actions against the individual.

John D. Tipton

IA 99-055

A Notice of Violation was issued November 23, 1999, based on an investigation which concluded that the individual deliberately adulterated a urine sample during a random drug screening on November 9, 1998, to avoid detection for illegal drug usage. A second sample was subsequently taken, which indicated a positive result for an illegal drug. After identification of the individual's deliberate actions, the licensee took appropriate corrective actions to deny unescorted access privilege to the facility.

Kenneth Wierman

IA 99-021

A Notice of Violation was issued May 10, 1999, based on an investigation which indicated that the individual failed to provide training for several employees prior to their assignment to an emergency response organization offsite radiation monitoring team. The training was not provided and the individual deliberately falsified documents to show that the training was given on January 14, 1997. An Order was not issued because the licensee removed access privileges and terminated the individual.

A- ORDERS



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 31, 1999

IA 98-058

A. Abdulshafi, Ph.D., P.E.
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Inspection Report No. 030-33414/98001(DNMS) and NRC Office of
Investigations Report No. 3-98-029)**

Dear Dr. Abdulshafi:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 (a)(1) of the Commission's regulations, as described in the Order. Your deliberate misconduct caused DAS Consult, Inc. to be in violation of NRC requirements contained in 10 CFR 30.41(a) and (b)(5). Based upon the information developed during the above-referenced inspection and investigation, and the January 5, 1999, predecisional enforcement conference, the NRC has determined that you committed a deliberate violation of NRC requirements. The Order prohibits your involvement in NRC-licensed activities for a period of one year and establishes other requirements as stated in the Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of the Order may also subject the person to a civil monetary penalty.

By separate letter issued today, the NRC terminates the NRC license of DAS Consult, Inc., as requested in your letter dated August 4, 1998.

Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

Malcolm R. Knapp,
Deputy Executive Director
for Regulatory Effectiveness

Enclosure: Order Prohibiting Involvement in NRC-licensed Activities

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
A. Abdulshafi, Ph.D.

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IA 98-058

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Dr. A. Abdulshafi, Ph.D. (Dr. Abdulshafi) is the Owner, President, and Radiation Safety Officer of DAS Consult, Inc. (DAS or Licensee), an NRC licensee who is the holder of Byproduct Material License No. 34-26551-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of moisture density gauges containing byproduct material in accordance with the conditions specified therein. The license was originally issued on February 2, 1994, and is due to expire on February 28, 2004.

II

Between June 19 and 25, 1998, a special inspection of licensed activities was conducted to determine if licensed material was being used, stored, or transferred in accordance with NRC requirements. The inspection was initiated because the Licensee failed to pay its annual fee, and attempts to contact the Licensee by telephone and by mail were unsuccessful. The inspector discovered that in January, 1997, the Licensee had sold its physical assets, including

six moisture density gauges containing byproduct material, to Diversified Global Enterprises Company (DGE), an entity which was not authorized to possess or use such material either by the NRC or by an Agreement State. The gauges contained sufficient quantities of cesium-137 and americium-241 to require persons who possess these devices to hold a specific NRC license. NRC regulations at 10 CFR 30.41, provide, in part, that licensees may not transfer byproduct material except to a person authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or an Agreement State.

In March 1997, two months after the sale of DAS physical assets to DGE, by a letter to NRC Region III dated March 24, 1997, Dr. Abdulshafi requested that the DAS license be amended to reflect a change in office location. The letter forwarded payment for the amendment as well as the annual fee. The letter did not indicate that the gauges had been sold or transferred. After May 1997, DGE moved the gauges to another location and the business association between Dr. Abdulshafi and DGE ended. As a result of the NRC special inspection, Dr. Abdulshafi retrieved the gauges from DGE and properly transferred them to another company authorized to possess and receive them.

On June 29, 1998, an investigation was initiated by the NRC Office of Investigations (OI) to determine whether the transfer of byproduct material to DGE was a willful violation. At the predecisional enforcement conference held with Dr. Abdulshafi and NRC staff by telephone on January 5, 1999, Dr. Abdulshafi agreed that a violation involving the improper transfer of licensed material occurred. He maintained that his actions were not deliberate, but were the result of personal problems and a misunderstanding between himself and DGE. In his OI testimony, however, Dr. Abdulshafi stated that during the negotiations preceding the January,

1997, sale of physical assets, he advised DGE that DGE must have an NRC license to possess the gauges, knowing that DGE did not possess a license. Moreover, Dr. Abdulshafi acknowledged continuing to advise Dr. El-Naggar, President of DGE, and possibly other DGE officials at various times between January and April 1997, that DGE needed to obtain an NRC license in order to possess the gauges. Based on the evidence obtained by OI and a predecisional enforcement conference with Dr. Abdulshafi on January 5, 1999, the NRC staff concludes that in January, 1997, Dr. Abdulshafi, Owner, President and Radiation Safety Officer of DAS, deliberately transferred nuclear material to DGE, a person not authorized to possess or use such material, in violation of 10 CFR 30.41.

III

Based on the above, it appears that Dr. Abdulshafi engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of 10 CFR 30.41(a) and (b)(5). Dr. Abdulshafi deliberately transferred six Troxler moisture density gauges containing byproduct material to a person not authorized to possess or use such material.

The NRC must be able to rely upon licensees and their employees to comply with NRC requirements, including the requirement that byproduct material may be transferred only to persons authorized to receive such materials, in order to protect public health and safety. Dr. Abdulshafi's deliberate action in causing the Licensee to violate 10 CFR 30.41 has raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. Abdulshafi were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Abdulshafi be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. Additionally, Dr. Abdulshafi is required to notify the NRC of his subsequent employment in NRC-licensed activities for a one year period following the prohibition period.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Dr. Abdulshafi is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Dr. Abdulshafi is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

3. For a period of one year after the one year period of prohibition has expired, Dr. Abdulshafi shall, within 20 days of acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Dr. Abdulshafi shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon a demonstration by Dr. Abdulshafi of good cause.

V

In accordance with 10 CFR 2.202, Dr. Abdulshafi must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in

writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Abdulshafi or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and to Dr. Abdulshafi if the answer or hearing request is by a person other than Dr. Abdulshafi. If a person other than Dr. Abdulshafi requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Abdulshafi, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time

for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Dated at Rockville, Maryland
this 31 day of March 1999

January 6, 1997

EAs 96-152 and 96-301

Redesignated as IA 97-006

Shashi K. Agarwal, M.D.
290 Central Avenue
Orange, New Jersey 07050-3414

Dear Dr. Agarwal:

The Settlement Agreement that you agreed to on November 22, 1996, has been executed. A signed copy of the Agreement is enclosed (Enclosure 1). Pursuant to the terms of the Settlement Agreement, NRC is issuing the enclosed Settlement Order Terminating License and Prohibiting Involvement in Licensed Activities (Order) (Enclosure 2).

Under the terms of this Order, for a period of five years beginning November 22, 1996, you, as well as any successor entity, are prohibited from engaging in, or controlling, any NRC-licensed activity. Should you violate the terms of this Order, you may be subject to civil and criminal sanctions under sections 233 and 234 of the Atomic Energy Act of 1954, as amended.

If you have questions concerning this Order, you may reach me at 301-415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

Sincerely,
Original Signed By
James Lieberman
James Lieberman, Director
Office of Enforcement

Enclosures:

1. Settlement Agreement
2. Settlement Order

cc: Steven I. Kern, Esq.
1120 Route 22 East
Bridgewater, New Jersey 08807

Docket No. 030-32908
License No. 29-28784-01

UNITED STATES
NUCLEAR REGULATORY COMMISSION
BEFORE THE OFFICE OF ENFORCEMENT

In the Matter of)

SHASHI K. AGARWAL, M.D.
Orange, New Jersey

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Docket No. 030-32908
License No. 29-28784-01
EA 96-152

SETTLEMENT AGREEMENT

1. Shashi K. Agarwal, M.D. (Dr Agarwal or licensee) is the holder of Byproduct Materials License No. 29-28784-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the possession and use of any byproduct material identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was issued on November 27, 1992, and is due to expire on December 31, 1997.
2. On September 12, 1996, an Order Suspending License (Effective Immediately) and Demand for Information (Order and Demand) was issued to the licensee based on the licensee's: (1) failure to comply with numerous NRC requirements, as identified during an NRC inspection conducted at the licensee's facility April 18 and 30, 1996; (2) providing apparent inaccurate information to the NRC; and (3) failure to cooperate with the NRC or appear for a predecisional enforcement conference. The Order and Demand required that the licensee provide responses in writing by October 2, 1996, and contained instructions for providing the responses. The licensee did not provide the required written responses. On October 7, 1996, Dr. Agarwal, through his attorney, contacted the NRC and indicated that he desired to terminate his license and enter into a settlement agreement to resolve all matters pending between the licensee and the NRC.

3. Dr. Agarwal and the NRC staff conclude that the following Settlement Agreement best serves the interests of the parties and the purposes of the Atomic Energy Act and the NRC's requirements:

- A. Dr. Agarwal agrees to transfer all NRC-licensed material to an authorized recipient within 30 days of the date that this Settlement Agreement is signed.
- B. Dr. Agarwal agrees to provide to the Regional Administrator, Region I, within seven days following the completion of the transfer:
 - i. a completed NRC Form 314 to certify that the licensed material has been transferred, and
 - ii. the results of a radiation survey, conducted and prepared in accordance with 10 CFR 30.36(j)(2), of the premises where licensed activities were performed.
- C. Dr. Agarwal agrees that NRC Byproduct Materials License No. 29-28784-01 shall be terminated upon written approval by NRC Region I of the information submitted under Section B above.
- D. Dr. Agarwal agrees that, for a period of five years from the date of the execution of this Settlement Agreement, neither he nor a successor entity shall be involved in or exercise any control over

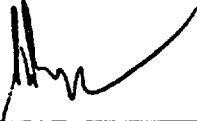
licensed activities within the jurisdiction of the NRC, including, but not limited to, involvement as owner, authorized user, controlling shareholder, or radiation safety officer.

- E. The NRC will issue a Settlement Order to impose the requirements in A. through D. above. Dr. Agarwal waives the right to contest the Confirmatory Order in any manner, including the right to request a hearing on the Settlement Order.

- F. The NRC agrees to take no further enforcement action for the matters set forth in the Order and Demand dated September 12, 1996.

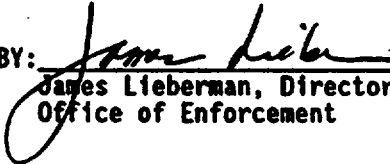
FOR THE LICENSEE

Dated: 11/22/96

BY: 
Shashi K. Agarwal, M.D.

FOR THE NUCLEAR REGULATORY COMMISSION

Dated: 1/4/97

BY: 
James Lieberman, Director
Office of Enforcement

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

SHASHI K. AGARWAL, M.D.
Orange, New Jersey

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)
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Docket No. 030-32908
License No. 29-28784-01
EAs 96-152 and 96-301

SETTLEMENT ORDER TERMINATING LICENSE
AND PROHIBITING INVOLVEMENT IN LICENSED ACTIVITIES

I

Shashi K. Agarwal, M.D. (Dr. Agarwal or licensee) is the holder of Byproduct Materials License No. 29-28784-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the possession and use of any byproduct material identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was issued on November 27, 1992, and is due to expire on December 31, 1997.

II

On September 12, 1996, an Order Suspending License (Effective Immediately) and Demand for Information (Order and Demand) was issued to the licensee based on the licensee's: (1) failure to comply with numerous NRC requirements, as identified during an NRC inspection conducted at the licensee's facility April 18 and 30, 1996; (2) providing apparent inaccurate information to the NRC; and (3) failure to cooperate with the NRC or appear for a predecisional enforcement conference. The Order and Demand required that the licensee provide responses in writing by October 2, 1996, and contained instructions for providing the responses. To date, the licensee has not provided the required written responses.

III

On October 7, 1996, Dr. Agarwal, through his attorney, contacted the NRC and indicated that he desired to terminate his license and resolve all matters pending between himself and the NRC. As the parties desire to resolve all matters pending between them, the licensee has entered into a Settlement Agreement with the NRC executed on January 3, 1997. Under the terms of the Settlement Agreement, Dr. Agarwal agrees to the termination of his NRC license and that he will not apply for an NRC license or engage in NRC-licensed activities for a period of five years from the date of the execution of the Settlement Agreement; and the NRC agrees that it will take no further enforcement action for the matters set forth in the Order and Demand.

IV

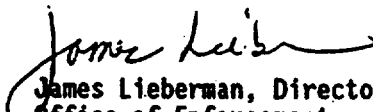
Accordingly, pursuant to sections 81, 161b, 161i, 161o, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.204, and 10 CFR Parts 30 and 35, IT IS HEREBY ORDERED THAT:

- A. By February 7, 1997, Dr. Agarwal shall transfer all NRC-licensed material to an authorized recipient.

- B. Within seven days following the completion of the transfer, Dr. Agarwal shall provide to the Regional Administrator, Region I:

1. a completed NRC Form 314 to certify that the licensed material has been transferred, and
 2. the results of a radiation survey, conducted and prepared in accordance with 10 CFR 30.36(j)(2), of the premises where licensed activities were carried out.
- C. Upon written approval by NRC Region I of the information submitted under Section IV.B., NRC Byproduct Materials License No. 29-28784-01 is hereby terminated.
- D. For a period of five years from November 22, 1996, neither Dr. Agarwal nor a successor entity shall be involved in or exercise any control over licensed activities within the jurisdiction of the NRC, including, but not limited to, involvement as owner, authorized user, controlling shareholder, or radiation safety officer.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 6th day of January 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 27, 1999

IA 98-061

Mr. Randall Allmon
c/o March Metalfab, Inc.
2250 Davis Ct.
Hayward, CA 94545-1190

**SUBJECT: CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)**

Dear Mr. Allmon:

This letter refers to our letter of January 6, 1999 concerning consent to the provisions of a Confirmatory Order and your reply consenting to the terms proposed.

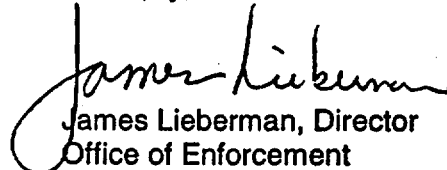
The enclosed Order is being issued as a result of the NRC's determination that as a result of the provision of inaccurate and incomplete information, public health and safety require that commitments be confirmed by a Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately).

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

Questions concerning this order should be addressed to Mr. Geoffrey Cant, 301/415-3283.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosure: As stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Randall W. Allmon

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)

IA 98-061

CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Randall W. Allmon is employed by March Metalfab, Inc. (MMI) as a Project Manager. MMI is a subcontractor of Sierra Nuclear Corporation (SNC), which holds NRC Certificate of Compliance 72-1007 for the VSC-24 cask, used by general licensees, Palisades Nuclear Plant (PNP) and Arkansas Nuclear One (ANO). The general license (10 CFR 72.210) relied on by PNP and ANO is for the storage of spent nuclear fuel under 10 CFR Part 72.

II

In March 1995, PNP loaded spent fuel into a multi-assembly sealed basket (MSB) spent fuel cask that had been supplied by SNC and fabricated by MMI. When the cask was pressurized with helium, two leaks were identified in the wall of the MSB adjacent to the closure weld. Subsequent analysis by PNP metallurgical personnel determined that the defects were caused by underbead or hydrogen cracking, resulting from a base metal weld repair to the MSB shell inner wall that was performed during MSB manufacturing. The NRC staff learned of the problem experienced by PNP as a result of inspection activities following a similar closure weld failure at ANO. The staff became concerned that undetected cracks in other MSBs, produced by SNC that were already loaded with spent fuel, could propagate while the casks were in storage, affecting the integrity of the cask confinement boundary. As a result, during the week of March 17-21, 1997, a special inspection was conducted at SNC and MMI.

During the special inspection, five MMI employees who were considered most likely to have been aware of the fabrication activities during the manufacture of the MSBs that failed were interviewed. In his interview at this time, regarding temporary attachments and weld repairs, Mr. Allmon stated that there was no reason to use temporary attachments and the only weld repairs would be those for repair of lifting clamp marks and the lifting clamp area was within approximately the first 2.5 inches from the top of the cask. Mr. Allmon stated that no welding was done on the inside of the top area of the MSB where the "tear" occurred during the closure welding at PNP.

In July 1997, the NRC conducted a further inspection of MMI and SNC. During that inspection, employees of both companies acknowledged that undocumented welds had been made on casks sold to ANO and PNP. In the course of this inspection, both Mr. Allmon, the Project Manager and the Quality Assurance Manager for MMI admitted that they were aware that repair welding had been performed on the inside of the MSBs during fabrication and that they had not informed the NRC inspectors of those welds during the March 1997 inspection interviews. The NRC continued to investigate the matter and the Office of Investigations issued its report on October 16, 1998.

The NRC has concluded that because Mr. Allmon was knowledgeable about the fabrication process and was aware that welding had been done on the insides of the MSBs, he deliberately made statements in March 1997 to SNC and to the NRC that were inaccurate concerning the the internal welding. The information involved was material to the NRC's understanding as to the quality of the MSBs and delayed the NRC's action to ensure integrity of MSBs. As a result, the NRC has further concluded that in providing the information, Mr. Allmon violated 10 CFR 72.11, "Completeness and Accuracy of Information" and 10 CFR 72.12, "Deliberate Misconduct." The NRC believes that the circumstances of this matter raise questions as to Mr.

Allmon's willingness to comply with Commission requirements. Mr. Allmon has not admitted that a violation occurred.

III

In a telephone call on December 7, 1998, Mr. Allmon agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC- licensed activities for a period of five years from the date that the Order is issued. The staff believes that this will adequately protect the public health and safety and, therefore, finds this acceptable. MMI and Mr. Allmon requested that if the Order is issued, they be allowed to complete work on one small existing contract to supply 10 plug assemblies for a NUHOMS cask. This provision is acceptable, as the assemblies have a limited safety function that can be verified by measurement at the time of use. On January 6, 1999, the staff forwarded to Mr. Allmon a copy of the factual basis of the proposed order and the implementation paragraph. On January 11, 1999, Mr. Allmon consented to the issuance of the order with those provisions and waived his rights to a hearing on this action.

I find that Mr. Allmon's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Allmon's commitments be confirmed by this Order. Based on the above and Mr. Allmon's consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 72, and 10 CFR 72.12, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

- A. Except as noted in paragraph B, Mr. Allmon is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include providing or supplying, whether directly to NRC licensees or Certificate of Compliance holders, or as a contractor or subcontractor to a licensee or Certificate of Compliance holder, structures, systems, or components, subject to a procurement contract specifying compliance with 10 CFR Chapter I.
- B. Mr. Allmon may complete work on the contract that MMI entered into prior to the date of this order to fabricate a total of 10 plug assemblies for a NUHOMS cask.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Allmon of good cause.

V

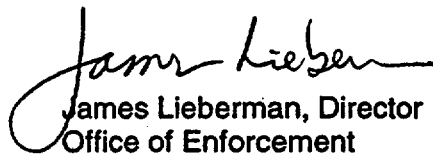
Any person adversely affected by this Confirmatory Order, other than Mr. Allmon, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address, and to Sierra Nuclear Corporation. If such a person requests a hearing, that person shall set forth with particularity the manner in

which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated this 27th day of January, 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 1, 1995

IA 95-058

Five Star Products, Inc.
Construction Products Research, Inc.
ATTN: Mr. H. Nash Babcock,
401-534 Stillson Road
Fairfield, Connecticut 06430

SUBJECT: ORDER

Dear Mr. Babcock:

This refers to the limited inspection conducted on August 18 and 19, 1992, of the Five Star Products, Incorporated (Five Star) facilities in Fairfield, Connecticut. A copy of the inspection report is included as Enclosure 1 to this letter. This letter also addresses the NRC Office of Investigations (OI) Case 1-92-037R, which has been completed. A copy of the OI Report synopsis is included as Enclosure 2 to this letter.

Enclosure 3 is an Order being issued to Five Star, Construction Products Research, Inc. (CPR), and H. Nash Babcock based on the results of the inspection and investigation. The Order prohibits Five Star, CPR, or H. Nash Babcock from selling products or providing associated services to meet the requirements of 10 CFR Part 50 Appendix B and 10 CFR Part 21. Further, the Order provides that if Five Star, CPR or H. Nash Babcock desires to resume providing basic components and associated services to the nuclear industry that meet those requirements, then Five Star, CPR and H. Nash Babcock must comply with certain provisions of the Order.

A written response is not required to the Order. However, you may respond as provided in the Order. If Five Star, CPR or H. Nash Babcock desires to resume providing basic components and associated services to the nuclear industry for use in safety-related applications, Five Star, CPR, and H. Nash Babcock must respond to the Order, as well as comply with the other requirements stated in the Order.

This Order is effective in 20 days unless a hearing is requested.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order once it is effective shall be subject to criminal prosecution as set forth in that section.

The NRC is continuing to review various actions by Five Star and CPR and issuance of this Order does not preclude the NRC from taking further action in the future based on the outcome of those reviews.

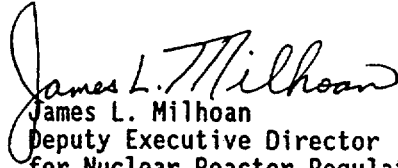
Five Star Products, Inc.

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Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

Sincerely,

A handwritten signature in cursive script that reads "James L. Milhoan". The signature is written in dark ink and is positioned above the typed name and title.

James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations and Research

Enclosures: As Stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FIVE STAR PRODUCTS, INC.)
and)
CONSTRUCTION PRODUCTS RESEARCH)
Fairfield, Connecticut)
and)
H. NASH BABCOCK)

IA 95-058

ORDER

I

Five Star Products, Inc. (FSP), is a company located in Fairfield, Connecticut, and was formerly known as U.S. Grout Corporation. FSP manufactures and sells grout and concrete products to the nuclear industry and has done so for about 20 years. Through a holding company, Mr. Babcock owns FSP and several related businesses, including Construction Products Research, Inc. (CPR), which performs laboratory tests of FSP products. Mr. Babcock is Vice-President of FSP and President of CPR.

II

FSP submitted its grout and concrete products to CPR for testing. Following the tests, CPR issued certifications that it tested FSP products in conformance with certain specifications of the American Society for Testing and Materials. FSP subsequently utilized those certifications as the basis for certifying that its products satisfied Appendix B and customer Purchase Order (PO) requirements. At various times since 1980, FSP has advertised and represented to NRC licensees that its products are manufactured in accordance with the requirements of Appendix B. It has supplied products pursuant to purchase orders requiring FSP to meet the requirements of Appendix B, and 10

CFR Part 21. Licensees who have purchased material from FSP under FSP's certification of quality have used the grout and concrete in safety-related applications and as basic components.

The Nuclear Regulatory Commission (NRC or Commission) issued 10 CFR Part 21 (Part 21) to implement Section 206 of the Energy Reorganization Act of 1974. Part 21 imposes, *inter alia*, evaluation and reporting requirements on directors and responsible officers of firms which supply basic components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974. Basic components are structures, systems, or parts in which a defect or failure to comply with applicable requirements could create a substantial safety hazard. 10 CFR 21.3(a). Part 21 is implemented in conjunction with Appendix B, which contains the quality assurance (QA) criteria applicable to design, fabrication, construction, and testing of safety-related structures, systems, and components in commercial nuclear power plants. Together, these requirements are intended to assure the safety of safety-related components, materials, and services for nuclear power plants.

Section 206 of the Energy Reorganization Act of 1974 requires directors and responsible officers of firms constructing, owning, operating or supplying the basic components of a facility or activity licensed or regulated by the Atomic Energy Act of 1954, as amended, who obtain information regarding defects in those basic components, or failures of basic components, or of the facility to comply with NRC requirements, to notify the NRC of those defects and failures to comply. Section 206(d) authorizes the Commission to conduct inspections

and other enforcement activities necessary to insure compliance with that section. 10 CFR 21.41 and 21.51 implement Section 206(d).

III

The NRC conducts inspections of vendors who supply safety-related components pursuant to Appendix B and who supply basic components pursuant to Part 21. On August 18, 1992, the NRC began an unannounced inspection of FSP, and of its laboratory contractor, CPR, to determine the extent to which FSP supplied basic components to NRC licensees, the adequacy of FSP's QA Program, the adequacy of CPR's testing of FSP products, and the adequacy of FSP products.

Shortly after the inspection began, Mr. Babcock met with the inspection team and questioned the NRC's authority to conduct the inspection. Mr. Babcock was presented with two identical letters from the NRC staff, dated August 13, 1992, each addressed separately to FSP and CPR. The letters outlined the NRC's inspection authority under 10 CFR Part 21, Section 161o of the Atomic Energy Act of 1954, as amended (AEA), and Section 206(d) of the Energy Reorganization Act of 1974, as amended (ERA). Despite this, Mr. Babcock continued to question the NRC's authority and, throughout the inspection, denied the inspectors access to inspect CPR's testing laboratory, which was located in the basement of FSP's Fairfield, Connecticut, headquarters, and access to inspect CPR's laboratory records.

During the inspection of August 18 and 19, 1992, the inspection team reviewed NRC power reactor licensee POs submitted to Five Star in order to determine

the scope of FSP's nuclear involvement. The team was provided with POs for the period 1988 to 1992. Those POs demonstrate that at least seven NRC reactor licensees and one licensee contractor had issued POs to FSP for safety-related grout and concrete mix products, and had specified compliance with Appendix B and Part 21.

The inspection team reviewed copies of several NRC licensee audit reports of FSP and CPR. These reports documented that NRC licensee requests to audit CPR's test laboratory and records were consistently denied by FSP. Further, several NRC licensee audit reports found that FSP's QA program was not acceptable and did not meet certain requirements of Appendix B.

The NRC inspection team requested copies of all audits performed by FSP of CPR to determine CPR's compliance with the quality assurance criteria of Appendix B and Part 21. Only one FSP audit of CPR was performed, by the FSP QA Manager, and it was provided to the NRC inspection team by the FSP QA Manager. The July 31, 1992 audit report concluded that CPR's June 10, 1992 QA program was satisfactory. The format and most of the language of this report were identical to a report of an audit conducted by Toledo Edison, an NRC Part 50 reactor licensee, of FSP's QA program in February 1991. The FSP QA Manager later admitted that he had not in fact conducted an audit of CPR, and that he had used the Toledo Edison audit report to fabricate the July 31, 1992 audit report of CPR.

On August 19, 1992, the second day of the inspection, Mr. Babcock told the inspectors to leave at the end of that day and not return until after Labor

Day. At 4:45 p.m. that day, Mr. Babcock was presented with another letter from the NRC staff which was witnessed by members of the inspection team and Mr. Henry Allen of FSP. This letter reiterated the legal authority of the NRC to conduct the inspection, and notified Mr. Babcock that continued refusals to permit inspection of FSP or CPR would be treated as a violation of 10 CFR 21.41, could result in enforcement action, and could be subject to treatment as a criminal violation in accordance with Sections 1610 and 223 of the AEA. Notwithstanding this second letter, Mr. Babcock continued to deny the NRC inspectors access to the CPR laboratory and to records of the CPR laboratory. The inspectors left the site at 5:00 pm as Mr. Babcock had requested.

The inspection team also requested copies of QA manuals for both FSP and CPR which would provide the basis to support FSP's certifications to licensees that its products were manufactured under an Appendix B Quality Assurance (QA) program. Copies of these documents were not furnished by FSP due to Mr. Babcock's suspension of further inspection activities.

As a result of FSP's and Mr. Babcock's curtailing the inspection, the inspection team was unable to review the implementation of FSP's QA Program against licensee POs or to inspect CPR's testing of FSP's grout and concrete mix products, and thus was unable to determine whether those products were produced, tested and provided in compliance with Appendix B and Part 21. Therefore, the NRC staff could not determine whether there was reasonable assurance that those FSP grout and concrete mix products were acceptable for use in safety-related applications in nuclear power plants.

Shortly thereafter, the NRC obtained a federal criminal search warrant, which was executed on September 1, 1992. Certain documents and testimonial evidence were taken.

Additionally, the NRC Office of Investigations conducted an investigation of the allegations leading to and the events surrounding the inspection. (OI Case No. 1-92-037). During the course of the OI investigation, Mr. Babcock instructed his attorney to forward to the NRC a letter dated February 18, 1994, which Mr. Babcock had composed and signed. The attorney forwarded the letter, in which Mr. Babcock stated: "We did not deny the NRC inspectors access to the laboratory in August 1992. Mr. John S. Ma, a civil engineer on the NRC inspection team, was escorted to the lab where he conducted an inspection of the test laboratory." As indicated above, and as known to Mr. Babcock, no NRC inspectors were allowed in the laboratory at any time during the August 1992 inspection and, therefore, the statement concerning Mr. Ma's access to and inspection of the CPR laboratory is deliberately false. The letter was material because it provided incorrect information to the NRC on a matter that was under investigation.

IV

Based on the facts discussed above, the NRC concludes that the following violations of NRC requirements occurred:

- A. 10 CFR 50.5, "Deliberate misconduct" prohibits any contractor (including a supplier or consultant), subcontractor, or any employee of a

contractor or subcontractor who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part, from deliberately submitting to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, the Quality Assurance Manager of Five Star Products, and Five Star Products through its Quality Assurance Manager, prepared an audit report for Five Star Products of the Construction Products Research QA Program, dated July 31, 1992, without conducting an audit of Construction Products Research, and provided that audit report to NRC inspectors during an inspection of Five Star Products on August 18-19, 1992, knowing that no such audit had been conducted. This audit report was material to the NRC because it was capable of influencing its determination of whether the Construction Products Research QA Program complied with Appendix B, and 10 CFR Part 21 requirements.

- B. Contrary to 10 CFR 50.5, Mr. H. Nash Babcock, the Vice President of Five Star Products, Inc. and the President of Construction Products Research, prepared and caused to be sent to the NRC a letter, in which Mr. Babcock stated that one NRC inspector had been allowed to and did in fact inspect the laboratory test facility of Construction Products Research on August 19, 1992. In fact, as Mr. Babcock knew, no NRC inspector was

permitted to inspect the laboratory facilities of Construction Products Research during the August 18-19, 1992 inspection. The letter was material to the NRC because it provided information directly related to a matter under investigation by the NRC, specifically, whether Mr. Babcock had deliberately denied NRC inspectors access to the Construction Products Research test facility in violation of NRC requirements.

- C. 10 CFR 21.41 requires that each individual, corporation, partnership or other entity subject to the regulations in Part 21 shall permit duly authorized representatives of the Commission to inspect its records, premises, activities, and basic components as necessary to effectuate the purposes of Part 21.

10 CFR 21.51(b) requires, in part, that each individual, corporation, partnership or other entity subject to the regulations in Part 21 must afford the Commission, at all reasonable times, the opportunity to inspect records pertaining to basic components.

Contrary to the above, on August 18 and 19, 1992, Five Star Products, Inc., through H. Nash Babcock, Vice President of Five Star Products, and Construction Products Research, Inc., through H. Nash Babcock, President of Construction Products Research, denied NRC inspectors access necessary to conduct an inspection of Five Star Products' contracted laboratory test facility, Construction Products Research, for, and of Construction Products Research records of test data associated with,

safety-related grout and concrete mix products sold by Five Star Products to nuclear power plants licensed under 10 CFR Part 50, pursuant to purchase orders specifying compliance with Appendix B and 10 CFR Part 21. Mr. Babcock also refused to allow NRC inspectors reasonable access to CPR laboratory personnel. By terminating the inspection, Mr. Babcock also prevented NRC inspectors from completing their examination of Five Star records.

V

The NRC and its licensees must be able to rely on licensee contractors and officers of licensee contractors, including providers of safety-related basic components such as Five Star Products, Inc., and suppliers of services associated with basic components, such as Construction Products Research, Inc., to comply with NRC requirements, including the requirements to provide accurate and complete information in all material respects and the requirements to permit inspection of their records, premises, activities and components. Five Star Products' and Mr. H. Nash Babcock's violations of 10 CFR 21.41, 21.51(b), and 50.5 demonstrate that Five Star Products and its Vice President, Mr. Babcock, are unable or unwilling to comply with NRC requirements to permit inspections and to provide complete and accurate information to the NRC in all material respects. In addition, they did not permit NRC licensees access to CPR's facilities in order to conduct necessary audits. Construction Products Research's and Mr. Babcock's violation of 10 CFR 21.41, 21.51(b), and 50.5 demonstrate that Construction Products Research and its President, Mr. Babcock, are unable or unwilling to comply with NRC

requirements to permit inspections by the NRC or its licensees and to provide complete and accurate information to the NRC in all material respects.

Consequently, I lack the requisite reasonable assurance that the NRC and NRC licensees can rely on the statements or certifications of Five Star Products, Inc., Construction Products Research, Inc., or Mr. H. Nash Babcock, that basic components of Five Star Products, Inc. or associated services of Construction Products Research, Inc. meet NRC requirements necessary to protect public health and safety. Therefore, I find that the public health, safety, and interest require that Five Star Products, Inc., Construction Products Research, Inc. and Mr. Babcock (1) be prohibited from providing structures, systems, and components subject to a procurement contract specifying compliance with Appendix B, or basic components subject to a procurement contract specifying compliance with 10 CFR Part 21, and (2) must respond to this Order and take certain other actions if they desire to provide such products to NRC licensees who specify that they must meet the requirements of Appendix B, or 10 CFR Part 21¹.

VI

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, Section 206 of the Energy

¹This does not prohibit FSP from supplying commercial grade materials to NRC licensees, or CPR from testing and certifying commercial grade materials to NRC licensees, provided that no representations are made with regard to FSP products being qualified for safety-related applications in nuclear power plants based on compliance with 10 CFR Part 50, Appendix B, or that 10 CFR Part 21 requirements have been met.

Reorganization Act, as amended, and the Commission's regulations at 10 CFR 2.202, 10 CFR Parts 21 and 50, and 10 CFR 50.5, IT IS HEREBY ORDERED, THAT:

1. Until Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock, and any concern which is owned, controlled, operated or managed by H. Nash Babcock, satisfy the provisions of paragraph 2., below, they are prohibited from:

- A. providing or supplying structures, systems, or components, including grout and concrete, subject to a procurement contract specifying compliance with Appendix B; and

- B. providing or supplying basic components, including grout and concrete, subject to a procurement contract specifying that the contract is subject to the requirements of 10 CFR Part 21;

- 2.A. If Five Star Products, Inc., Construction Products Research Inc., or any concern owned, controlled, operated or managed by H. Nash Babcock, desires to lift the prohibition specified in paragraph 1, above, then Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock or the concern owned, controlled, operated, or managed by H. Nash Babcock, shall, at least 90 days prior to the date it desires to have the prohibition lifted:

- (1) Advise the NRC of that intent in writing;
- (2) Respond in writing under oath or affirmation specifically as to each of the violations listed in Section IV, including: (a) an admission or denial of the alleged violation, (b) the reasons for the violation if admitted, and if denied, the reasons why, (c) the

corrective steps that have been taken and the results achieved,
(d) the corrective steps that will be taken to avoid further violations, and (e) the date when full compliance will be achieved;

(3) Agree in writing, under oath or affirmation, and in fact, to permit the NRC, NRC licensees, and contractors performing QA functions for such licensees, to inspect the records, premises, basic components and activities of Five Star Products, Inc., of Construction Products Research, Inc., or of any concern owned, controlled, operated or managed by H. Nash Babcock that desires to provide safety related products or basic components, or to perform tests to support claims that those products or components and those testing services meet the standards of Appendix B and 10 CFR Part 21, and to signify in writing a willingness to do so in the future;

(4) Agree in writing under oath or affirmation to demonstrate and in fact to demonstrate that those basic components and services associated with basic components meet the standards of Appendix B by having tests performed by an independent third party and having that third party provide copies of the results of those tests directly to the NRC; and

(5) The officers, managers, and supervisors of Five Star Products, Inc. and Construction Products Research, Inc. provide statements

that they understand that the activities and records of the organization are subject to NRC inspection, that communications with the NRC must be complete and accurate, and that any employee may provide information to the NRC at any time without fear of retribution; and

- B. When all conditions of paragraph 2.A. above have been satisfied, and the NRC has conducted inspections of the QA program and Part 21 program of Five Star Products, Inc., Construction Products Research, Inc., and any concern owned, controlled, operated, or managed by H. Nash Babcock, and any necessary corrective action has been completed, the prohibition of paragraph 1, above, will be lifted in writing.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Five Star Products, Inc., Construction Products Research, Inc., and Mr. H. Nash Babcock of good cause.

VII

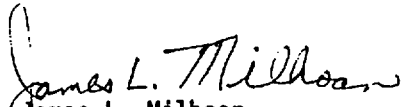
In accordance with 10 CFR 2.202, Five Star Products, Inc., Construction Products Research, Inc., and H. Nash Babcock, or any other person adversely affected by the Order, may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer

may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Five Star Products, Inc., Construction Products Research, Inc., and H. Nash Babcock, and any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Hearings and Enforcement and the Director, Office of Nuclear Reactor Regulation, both at the same address. If a person other than Five Star Products, Inc., Construction Products Research, Inc., or H. Nash Babcock requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section VI above shall be effective and final 20 days from the date of this Order without further order or proceedings.

FOR THE NUCLEAR REGULATORY COMMISSION



James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Dated at Rockville, Maryland
this 1st day of December 1995

SYNOPSIS

On September 30, 1992, an investigation was initiated concerning an allegation that Five Star Products, Inc. (Five Star), improperly tested and falsely certified material that was purchased from them by the nuclear power industry. During an unannounced August 18 and 19, 1992, inspection conducted by the NRC Vendor Inspection Branch (VIB), the NRC inspectors were denied access to Five Star's certification testing laboratory (i.e., Construction Products Research (CPR)). Also, during the course of the inspection, a potentially false audit report was provided to the inspectors for their review. This audit report of CPR was produced by Five Star's Quality Assurance (QA) Manager. On September 1, 1992, as a result of the denial of access, a Federal search warrant was obtained and executed on Five Star, with documents and other physical and testimonial evidence taken.

The OI investigation concludes that Five Star provided three inaccurate product certifications to nuclear power plants, in that Five Star's laboratory (CPR) did not possess the proper equipment to perform a specific test referenced on the certifications. However, from the evidence developed, it has not been substantiated that the creation of the inaccurate certifications was deliberate.

The OI investigation also concludes that the President of CPR willfully denied the NRC inspectors access to the testing laboratory.

The OI investigation further concludes that the Five Star QA Manager deliberately generated an audit report of CPR, without conducting the audit, and provided this report to the inspectors during the inspection.

In addition, during the course of the investigation, the president of CPR caused a letter to be sent the NRC, in which he stated that one of the NRC inspectors had been allowed to inspect the laboratory. That information is refuted by the inspectors. It is therefore concluded that the letter was submitted, knowingly containing false information.

December 28, 1995

Michael F. McBride, Esq.
LeBoeuf, Lamb, Greene & MacRae
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009-5728

SUBJECT: ORDER - IA 95-058 FIVE STAR PRODUCT, INC., CONSTRUCTION PRODUCTS
RESEARCH, INC., AND H. NASH BABCOCK

Dear Mr. McBride:

I have received your letters of December 27, 1995, in regard to the Stipulation to resolve the matter and also Mr. William N. Babcock's position regarding a hearing. I have executed the Stipulation and a signed copy is enclosed along with a letter concerning Mr. William N. Babcock. I will forward the Stipulation to the Federal Register.

I appreciate your cooperation in this matter.

Sincerely,

/s/
James Lieberman, Director
Office of Enforcement

Enclosure: As Stated

cc: J. Goldberg, OGC
SECY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FIVE STAR PRODUCTS, INC.)
and) No. IA 95-058
CONSTRUCTION PRODUCTS RESEARCH)
Fairfield, Connecticut)
and)
H. NASH BABCOCK)

**STIPULATION BETWEEN NUCLEAR REGULATORY
COMMISSION AND FIVE STAR PRODUCTS, INC.,
CONSTRUCTION PRODUCTS RESEARCH, INC., AND H. NASH BABCOCK**

Representatives of the Nuclear Regulatory Commission ("NRC") and Five Star Products, Inc., Construction Products Research, Inc. ("the Companies"), and H. Nash Babcock have met and have decided to resolve this matter as addressed in this Stipulation as set out below.

STIPULATION

The NRC, the Companies, and H. Nash Babcock stipulate to the following:

1. The Companies and H. Nash Babcock are free to sell commercial-grade products to anyone in the nuclear industry, as they now do. "Commercial-grade" is defined as in 10 C.F.R. Part 21 of the Commission's regulations. Five Star Products' commercial-grade materials may be used in any safety-related applications provided that NRC licensees properly dedicate the materials for use as basic components and verify their suitability for the applications. As of the date of the

settlement, NRC has not evaluated the quality of Five Star Products' materials, nor has the NRC received reports that Five Star Products' materials contain defects.

2. The NRC hereby relaxes and modifies paragraphs 1 and 2 of Section VI of the Order as follows:

"1. Until the Companies or H. Nash Babcock or any concern which is owned, controlled, operated or managed by H. Nash Babcock, satisfy the provisions of paragraph 2 below, they are prohibited from:

A. providing or supplying structures, systems, or components, including grout and concrete, subject to a procurement contract specifying compliance with 10

C.F.R. Part 50 Appendix B; and

B. providing or supplying basic components, including grout and concrete, subject to a procurement contract specifying that the contract is subject to the requirements of 10 CFR Part 21;

2.A. If the Companies, or any concern owned, controlled, operated or managed by H. Nash Babcock, desire to lift the prohibitions specified in paragraphs 1.A and 1.B, above, then the Companies, H. Nash Babcock, or the concern owned, controlled, operated, or managed by H. Nash Babcock, shall, at least 90 days prior to the date it desires to have the prohibition lifted:

- (1) Advise the NRC of that intent in writing;
- (2) Deleted.

(3) Agree in writing, under oath or affirmation, and in fact, to permit the NRC, NRC licensees, and contractors performing QA functions for such licensees, to inspect the records, premises, basic components and activities of the Companies or of any concern owned, controlled, operated or managed by H. Nash Babcock that desires to provide safety-related products or basic components, or to perform tests to support claims that those products or components and those testing services meet the standards of 10 CFR Part 50 Appendix B and 10 CFR Part 21, and to signify in writing a willingness to do so in the future;

(4) Agree in writing under oath or affirmation to demonstrate and in fact to demonstrate that those basic components and services associated with basic components meet the standards of 10 CFR Part 50 Appendix B by having tests performed by a mutually acceptable third party and having that third party provide copies of the results of those tests directly to the NRC; and

(5) The officers, managers, and supervisors of the Companies provide statements that they understand that the activities and records of the organization are subject to NRC inspection and that communications with the NRC must be complete and accurate;

B. When all conditions of paragraph 2.A above have been satisfied, and the NRC has conducted inspections of the QA program and Part 21 program of the Companies or of any concern owned, controlled, operated, or managed by H. Nash Babcock, and

any necessary corrective action has been completed, the prohibitions of paragraphs 1.A and 1.B, above, will be lifted in writing."

3. Except for the enforcement action reflected in the above-relaxed Order and this Stipulation, the NRC will neither impose, nor seek to impose, any sanction (other than as set forth in the relaxed Order and Stipulation) on the Companies or their officers and employees or H. Nash Babcock for the alleged violations described in the NRC Order issued on December 1, 1995.

4. All matters involving the termination of employment of Mr. Edward P. Holub are not covered by, or affected by, this Stipulation, the Stipulation is without prejudice to the parties' positions with respect to the Commission's jurisdiction or lack thereof over employment matters, and the NRC, the Companies, any other related company, and H. Nash Babcock retain all rights in any such case, matter, proceeding, or litigation now pending or which may hereinafter be instituted.

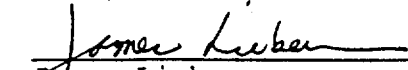
5. In light of this Stipulation, the Companies and H. Nash Babcock agree not to request a hearing on the matters addressed in the Order issued on December 1, 1995 and relaxed as described herein, despite their vigorous disagreement with some of the allegations contained in the December 1, 1995 Order.

6. The NRC, the Companies, and H. Nash Babcock agree that the allegations in the Order have not been made subject to an evidentiary hearing, and that this Stipulation will obviate the necessity for such a hearing, and they therefore agree that those allegations shall not estop any party from taking a

different position on such matters in any other case, litigation, matter, or proceeding.

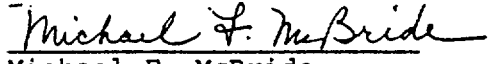
7. The Order as relaxed herein shall be effective upon execution of this Stipulation. This Stipulation shall be published in the Federal Register.

8. The persons signing below certify by their signatures that they have authority to sign this Stipulation for the entities appearing below their names.


James Lieberman
Director
Office of Enforcement
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555-0001
(301) 415-2741

For the United States Nuclear
Regulatory Commission

Dated: December 28, 1995


Michael F. McBride
LeBoeuf, Lamb, Greene
& MacRae, L.L.P.
1875 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20009-5728
(202) 986-8000

Attorney for Five Star
Products, Inc., Construction
Products Research, Inc.,
and H. Nash Babcock



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 19, 1997

IA 97-087

Finis Scott Bandy
[HOME ADDRESS DELETED
PURSUANT TO 10 CFR 2.790]

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC Investigation 4-96-044)**

Dear Mr. Bandy:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you as a consequence of the findings by the NRC Office of Investigations that concluded you deliberately falsified information which you provided on an application to obtain access authorization at Omaha Public Power District's (licensee) Fort Calhoun Station nuclear power plant, and that you subsequently provided false information relating to the application to the licensee and an NRC inspector. The Order prohibits your involvement in NRC-licensed activities for a period of five years.

The NRC has determined that you: (1) deliberately falsified information during the course of 1993 with respect to your application to obtain unescorted access to Fort Calhoun Station to indicate that you had been convicted in 1991 on a charge of speeding when, in fact, you had been convicted on a charge of theft of personal property; (2) altered copies of court records regarding your conviction to make it appear that you had been convicted of speeding; and (3) made false statements when questioned about your criminal history in 1993 by the licensee and in 1996 by the licensee and an NRC inspector.

The false information that you provided to the licensee and the NRC caused you to be in violation of 10 CFR 50.5, "Deliberate Misconduct." Specifically, Section 50.5(a)(2) provides, in part, that any employee of a licensee may not deliberately submit to a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The false information that you submitted was material because licensees are required to consider criminal history in making a determination as to whether to grant you unescorted access in accordance with 10 CFR 73.56.

Mr. Finis Scott Bandy

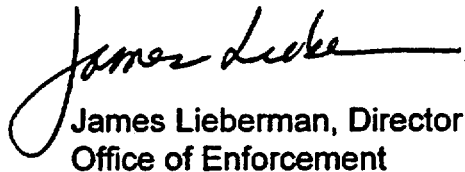
- 2 -

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order may be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Questions concerning the Order should be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC Public Document Room.

Sincerely,



James Lieberman, Director
Office of Enforcement

Enclosure: As Stated

cc w/Enclosure:
S. K. Gambhir, Division Manager
Production Engineering
Omaha Public Power District
Fort Calhoun Station FC-2-4 Adm.
P.O. Box 399
Hwy. 75 - North of Fort Calhoun
Fort Calhoun, Nebraska 68023-0399

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Finis Scott Bandy

)
)
)
)

IA 97-087

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Finis Scott Bandy was formerly employed by Omaha Public Power District (OPPD) as an instrumentation and control technician at OPPD's Fort Calhoun Station nuclear power plant, Blair, Nebraska. OPPD holds license No. DPR-40, issued August 9, 1973, by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The license authorizes the operation of the Fort Calhoun Station (FCS) in accordance with the conditions specified therein.

II

In August 1996, the NRC inspected access authorization files during an NRC security inspection at FCS. The NRC raised a question about arrest information that Mr. Bandy had supplied to OPPD during the course of 1993, in connection with his application for unescorted access to the plant. The information in question pertained to whether Mr. Bandy had been arrested for theft of personal property, as certain documents in his file

appeared to indicate, or had been arrested for excessive speed while driving, as Mr. Bandy claimed. As a result of the NRC's questions, OPPD agreed to interview Mr. Bandy in the presence of the NRC inspector. During the interview, Mr. Bandy denied that he had been arrested for theft and asserted that the only charge he was aware of involved excessive speed while driving.

Based on further questions about the accuracy of Mr. Bandy's statements and the information provided by him, Mr. Bandy's unescorted access to FCS was temporarily suspended on August 22, 1996. On August 26, 1996, OPPD terminated Mr. Bandy's employment and revoked his unescorted access to FCS. OPPD then conducted an investigation and determined that: (1) the only charge brought against Mr. Bandy in 1991 was a charge of theft of personal property; (2) copies of court records provided to OPPD by Mr. Bandy had been altered to make it appear that the charge had been for speeding; and (3) Mr. Bandy made false statements when questioned about his criminal history in 1993 by OPPD and in 1996 when questioned by OPPD and the NRC during its inspection. The NRC's investigation of this matter concluded that Mr. Bandy deliberately falsified criminal history information submitted to OPPD in 1993, and provided false information to OPPD and an NRC inspector when questioned about this in August 1996.

On July 22, 1997, the NRC issued a Demand for Information to Mr. Bandy, seeking information as to why the NRC should not conclude that he engaged in deliberate

misconduct and, if so, why the NRC should not prohibit his involvement in NRC-licensed activities. On July 29, 1997, Mr. Bandy contacted the NRC's Office of Enforcement, indicated that he had no interest in being involved in NRC-licensed activities, and indicated that he would be willing to consent to an order prohibiting his involvement in NRC-licensed activities. On August 19, 1997, the NRC sent a letter to Mr. Bandy formally seeking his consent to a confirmatory order prohibiting his involvement in NRC-licensed activities for five years. Mr. Bandy failed to respond to this letter or to NRC efforts to contact him.

III

Based on the above, the NRC has concluded that Mr. Bandy engaged in deliberate misconduct in 1993 and in August 1996, by: (1) deliberately falsely stating to OPPD during the course of 1993 that he had been convicted in 1991 of excessive speeding while driving when, in fact, he had been convicted of theft of personal property, and by deliberately altering copies of court records that were provided to OPPD; and (2) deliberately falsely stating in August 1996 to OPPD and an NRC inspector that he had been convicted in 1991 of excessive speeding while driving. These actions constituted a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately submitting to the NRC or a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. In this case, the information that Mr. Bandy provided regarding his personal history was

material because licensees are required to consider such information in making unescorted access determinations in accordance with the requirements of 10 CFR 73.56.

The NRC must be able to rely on the licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Bandy's actions in deliberately providing false information to the licensee and to the NRC constitute deliberate violations of Commission regulations. His conduct raises serious doubt about his trustworthiness and reliability; particularly whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Bandy were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Bandy be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Bandy is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Bandy's conduct described above is such that the public health, safety and

interest require that this Order be effective immediately.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Finis Scott Bandy is prohibited from involvement in activities licensed by the NRC for a period of 5 years. NRC-licensed activities are those that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Finis Scott Bandy is currently involved with another employer in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.
3. For the five-year period after the above period has expired, Mr. Bandy will notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, within 20 days of the first time he accepts employment

in NRC-licensed activities, as defined in Paragraph IV.1 above. In the notification, he will include a statement of his commitment to comply with regulatory requirements and address why the NRC should have confidence that he will comply with regulatory requirements, and the name, address and telephone number of his employer or entity where he will be involved in licensed activities.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Bandy of good cause.

V

In accordance with 10 CFR 2.202, Mr. Bandy must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Bandy, or any other such person adversely affected, relies and


the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Bandy. If a person other than Mr. Bandy requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Bandy or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Bandy may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order, on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 19th day of November 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

June 23, 1997

IA 97-049

Mr. Jeffrey Lee Barnhart
[HOME ADDRESS DELETED
UNDER 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) (OI REPORT NO. 3-97-005)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued as a consequence of your deliberate falsification of information which you provided on an application in order to obtain access authorization at Northern States Power Company's (licensee) Prairie Island Nuclear Generating Plant. The Order prohibits your involvement in NRC-licensed activities for a period of five years.

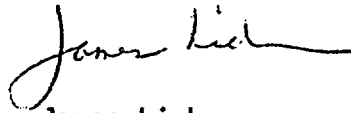
The NRC determined that on December 7, 1995, you deliberately falsified information on your security questionnaire in order to obtain unescorted access to Prairie Island Nuclear Generating Plant. On this questionnaire, you assumed the identity of your deceased brother and provided false statements regarding your history of drug use and past conviction for possession of illegal drugs. The false information that you submitted on your questionnaire caused you to be in violation of 10 CFR 50.5, "Deliberate Misconduct." Specifically, 10 CFR 50.5(a)(2) provides, in part, that any employee of a contractor may not deliberately submit to a licensee or a licensee's contractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The false information that you submitted was material because licensees are required to consider background information in making a determination as to whether to grant you unescorted access in accordance with 10 CFR 73.56. The background investigation must, at a minimum, verify an individual's true identity, verify an individual's character and reputation, and develop information concerning an individual's criminal history. The failure of an individual to provide this information is sufficient cause for denying him or her unescorted access to a nuclear power plant.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



James Lieberman,
Director, Office of Enforcement

Enclosure: Order Prohibiting Involvement in
NRC-Licensed Activities (Effective Immediately)

cc w/encl [WITH HOME ADDRESS DELETED UNDER 2.790]:

Mr. M. D. Wadley

Vice President, Nuclear Generation

Northern States Power Company

Plant Manager, Prairie Island

John W. Ferman, Ph.D.

Nuclear Engineer, MPCA

State Liaison Officer, State
of Minnesota

State Liaison Officer, State
of Wisconsin

Tribal Council, Prairie Island
Dakota Community

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

MR. JEFFREY LEE BARNHART
A.k.a. GREGORY KENNETH BARNHART

IA 97-049

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Jeffrey Lee Barnhart was a contract employee at Northern States Power Company's (Licensee or NSP) Prairie Island Nuclear Generating Plant (PINGP), working under temporary unescorted access authorization. NSP holds Facility Licenses No. DPR-42 and DPR-60, which were issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on August 9, 1973, and October 29, 1974, respectively. These licenses authorize the operation of PINGP in accordance with the conditions specified therein. The facility is located on the Licensee's site in Minnesota.

II

In accordance with 10 CFR 73.56, nuclear power plant licensees must conduct access authorization programs for individuals seeking unescorted access to protected and vital areas of the plant with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. Pursuant to 10 CFR 73.56, the unescorted access authorization

program must include, at a minimum, verification of an individual's true identity, verification of an individual's character and reputation, and development of information concerning an individual's criminal history; and the decision to grant unescorted access authorization must be based on the licensee's review and evaluation of all pertinent information.

In order to be certified for unescorted access at PINGP, as a contractor employee, Mr. Barnhart completed the security background questionnaire under the assumed name of his deceased brother, Mr. Gregory Kenneth Barnhart, on December 7, 1995. In February 1996, NSP received information concerning Mr. Barnhart's deception before Mr. Barnhart's full background investigation had been completed. A subsequent NSP record review found that Mr. Barnhart's true identity was Jeffrey Lee Barnhart and that he had submitted falsified documents in his request for access authorization. NSP interviewed Mr. Barnhart and determined that he had obtained a driver's license under the assumed name and had been using a false identity for several years. Additionally, Mr. Barnhart admitted that, contrary to his responses on the Security Questionnaire, he had used and was once cited for possession of marijuana. Based on this information, NSP denied Mr. Barnhart's access on February 8, 1996.

An investigative report was prepared by the NSP security department regarding the falsification of the licensee's access authorization documents. The report was reviewed during an investigation conducted by the NRC Office of

Investigations (OI), which was initiated on February 3, 1997. The OI investigation concluded that Mr. Barnhart had deliberately falsified his application for unescorted access, and was working under the assumed name of his deceased brother.

On April 24, 1997, a Demand for Information (DFI) was issued to Mr. Barnhart pursuant to 10 CFR 2.204 to determine whether enforcement action should be taken against him to ensure future compliance with NRC requirements. The DFI requested that Mr. Barnhart submit information by May 24, 1997, describing why the NRC should have confidence that he would provide complete and accurate information to NRC licensees and the Commission in the future. Mr. Barnhart did not respond to the DFI.

III

Based on the above, the NRC has concluded that Mr. Barnhart engaged in deliberate misconduct by deliberately assuming the identity of his deceased brother on his personal history questionnaire and misinforming the licensee as to his history of drug use and conviction for possession of marijuana. Mr. Barnhart's actions constitute a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately providing information to a licensee or contractor that the individual knows is inaccurate or incomplete in some respect material to the NRC. The information that Mr. Barnhart provided regarding his background information was material because, as indicated above, licensees are required to consider such information in making unescorted access determinations in accordance with the requirements of 10 CFR 73.56.

The NRC must be able to rely on the Licensee, its contractors, and Licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Barnhart's actions in deliberately providing false information to the Licensee constitute deliberate violations of Commission regulations, and his conduct raises serious doubt about his trustworthiness and reliability and as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC Licensees and their contractors in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Barnhart were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Barnhart be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. If Mr. Barnhart is currently involved with another licensee in NRC-licensed activities, Mr. Barnhart must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Barnhart is required to notify the NRC of his employment in NRC-licensed activities for a period of five years

following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Barnhart's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161c, 161i and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Jeffrey Lee Barnhart, a.k.a. Mr. Gregory Kenneth Barnhart, is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. For the purposes of this Order, licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. For a period of five years after the five-year period of prohibition has expired, Mr. Barnhart shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be,

involved in the NRC-licensed activities. In the first notification, Mr. Barnhart shall include a statement of his commitment to comply with NRC regulatory requirements and the basis for the Commission to have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Barnhart of good cause.

V

In accordance with 10 CFR 2.202, Mr. Barnhart must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Barnhart or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted

to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351, and to Mr. Barnhart, if the answer or hearing request is by a person other than Mr. Barnhart. If a person other than Mr. Barnhart requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

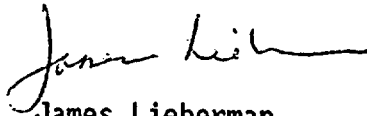
If a hearing is requested by Mr. Barnhart or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Barnhart may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or

proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman
Director, Office of Enforcement

Dated at Rockville, Maryland
this 23rd day of June 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 27, 1997

IA 97-032

Mr. Daniel R. Baudino
HOME ADDRESS DELETED
UNDER 2.790

Dear Mr. Baudino:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) (OI REPORT NO. 3-96-008)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued as a consequence of your deliberately providing false information on applications you made for access authorization at the Commonwealth Edison Company's (licensee) Dresden Nuclear Station. The Order prohibits your involvement in NRC-licensed activities for a period of five years.

Specifically, you falsely indicated on forms entitled "Personal History Questionnaire for Unescorted Access" dated August 21, 1990, August 5, 1991, January 16, 1992, and October 5, 1992, that you had not been arrested and/or convicted of any criminal offense when, in fact, you had been arrested and convicted of multiple misdemeanors as of these dates.

The false information that you submitted on your personal history questionnaires dated January 16, 1992, and October 5, 1992, caused you to be in violation of 10 CFR 50.5 (Deliberate Misconduct). Specifically, 10 CFR 50.5(a)(2) provides, in part, that any employee of a contractor may not deliberately submit to a licensee or a licensee's contractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The false information that you submitted was material because licensees are required to consider criminal history in making a determination as to whether to grant you unescorted access in accordance with 10 CFR 73.56.

While you deliberately made the same false statements on your personal history questionnaires of August 21, 1990 and August 5, 1991, those instances are not being cited in the enclosed Order because they occurred prior to September 16, 1991, the date that 10 CFR 50.5 became effective.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

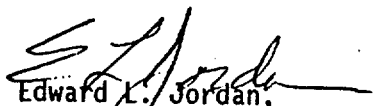
Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741.

Daniel R. Baudino

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,


Edward L. Jordan,
Deputy Executive Director
for Regulatory Effectiveness

Enclosure: Order Prohibiting Involvement in
NRC-Licensed Activities (Effective Immediately)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MR. DANIEL R. BAUDINO

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)
)

IA 97-032

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Daniel R. Baudino was formerly employed by Bechtel Constructors Inc. (Bechtel) at the Commonwealth Edison Company's Dresden Nuclear Station (ComEd, Dresden, or Licensee) where he was granted unescorted access. ComEd holds Facility Licenses No. DPR-2, No. DPR-19, and No. DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize ComEd to operate the Dresden Nuclear Station, Units 2 and 3, and possess and maintain but not operate Unit 1 (Dresden Station) located near Morris, Illinois, in accordance with the conditions specified therein.

II

In accordance with 10 CFR 73.56, nuclear power plant licensees must conduct access authorization programs for individuals seeking unescorted access to protected and vital areas of the plant with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. The unescorted access authorization program must include a background investigation, including criminal history. The decision to grant unescorted access authorization must be based on the licensee's review and evaluation of all pertinent information.

In order to be certified for unescorted access at Dresden Station as a contractor employee, Mr. Baudino completed Dresden Station forms entitled

"Personal History Questionnaires for Unescorted Access" (personal history questionnaires) on several occasions, including January 16, 1992, and October 5, 1992. On each of these forms, Mr. Baudino indicated and certified with his signature that he had never been arrested and convicted of a criminal proceeding for the violation of any law, regulation or ordinance, including driving under the influence or traffic offenses other than non-personal injury traffic or parking offenses. Mr. Baudino was subsequently granted unescorted access to the Dresden station on each occasion, based in part on his representations on the personal history questionnaires that he had no criminal history. Mr. Baudino's unescorted access to the Dresden Station was revoked for cause by the Licensee on December 5, 1995, for other reasons than accurately completing his personal history questionnaire.

During an investigation by the NRC Office of Investigations (OI) at the Dresden Station, Mr. Baudino was interviewed by OI on March 14, 1996. During the interview, Mr. Baudino was shown copies of the personal history questionnaires referenced above and acknowledged that the signatures on each of the forms were his.

Mr. Baudino also acknowledged that his marking of an "x" in the "no" block under the question regarding criminal history indicated that he had not been arrested or convicted of any offenses. When confronted with the arrest records that OI had obtained from the Grundy County, Illinois, Circuit Court, which revealed that Mr. Baudino had multiple arrests and convictions during the period of 1987 to October 5, 1992, Mr. Baudino admitted they were records of his arrests. Mr. Baudino stated that he thought the questions pertained to federal arrests and convictions when asked why he falsely reported on the forms that he had no criminal history.

In a report issued on September 23, 1996, OI concluded that Mr. Baudino deliberately falsified his criminal history information on the personal history questionnaires in order to gain unescorted access to the Dresden Station.

III

Based on the above, the NRC has concluded that Mr. Baudino engaged in deliberate misconduct on January 16, 1992, and October 5, 1992, by deliberately falsely stating on the personal history questionnaires he signed on those dates that he had no criminal history. Mr. Baudino's actions constitute a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately providing information to a licensee or contractor that the individual knows is inaccurate or incomplete in some respect material to the NRC. The information that Mr. Baudino provided regarding his criminal history was material because, as indicated above, licensees are required to consider such information in making unescorted access determinations in accordance with the requirements of 10 CFR 73.56.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Baudino's actions in deliberately providing false information to the Licensee constitute deliberate violations of Commission regulations, and his doing so on multiple occasions raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC Licensees and their contractors in the future, and raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Baudino were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Baudino be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if Mr. Baudino is currently involved with another licensee in NRC-licensed activities, Mr. Baudino must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Baudino is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Baudino's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161c, 161i and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT :

1. Mr. Daniel R. Baudino is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC,

including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years after the five year period of prohibition has expired, Mr. Baudino shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Baudino shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission shall have confidence that he will now comply with applicable NRC requirements.

- The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Baudino of good cause.

V

In accordance with 10 CFR 2.202, Mr. Baudino must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time

to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Baudino or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351, and to Mr. Baudino, if the answer or hearing request is by a person other than Mr. Baudino. If a person other than Mr. Baudino requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Baudino or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Baudino may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Edward L. Jordan
Deputy Executive Director
for Regulatory Effectiveness

Dated at Rockville, Maryland
this 27th day of May 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 31, 1997

IA 97-065

Aharon Ben-Haim, Ph.D.
[Home Address Deleted
pursuant to 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) PENDING FURTHER ORDER

Dear Dr. Ben-Haim:

The enclosed Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately), is being issued because of your deliberate violations of NRC requirements. The violations were identified during an NRC inspection conducted on January 29, 1997, at the Newark Medical Associates, New Jersey facility, as well as a subsequent investigation by the NRC Office of Investigations. The NRC staff's review of the results of the OI investigation is continuing. The evidence obtained during the inspection and investigation revealed that you engaged in deliberate misconduct as defined in 10 CFR 30.10. Specifically, you were a consultant to the licensee and you assisted the licensee President with the preparation and submittal of a letter, dated February 22, 1996, to the NRC transmitting an application for a material license to possess and use byproduct material, and that application was prepared by you and submitted without the knowledge and consent of the individual listed on the license as the authorized user and Radiation Safety Officer (RSO). Also, that individual had no affiliation or association with Newark Medical Associates, and has no recollection of ever meeting representatives of Newark Medical. As a result, NRC License No. 29-30282-01 was issued on September 25, 1996, based on information prepared by you that was not complete and accurate in all material respects. Further, you knew that after the license was issued, the licensee used licensed material on numerous occasions even though the licensee did not have the authorized user or RSO named in the license application and in the NRC license.

Given your engagement in deliberate violations of NRC requirements, the NRC is issuing to you an Order Prohibiting Involvement In NRC Licensed Activities (Effective Immediately) Pending Further Order. Among other things, the Order prohibits you from developing license applications, procedures, and policies to meet license requirements; providing training to meet license requirements; and providing professional services to meet license requirements. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Dr. Aharon Ben-Haim

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room.

Questions concerning these actions should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

Sincerely,



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness

Docket No. 030-34086
License No. 29-30282-01

Enclosure:
Order Prohibiting Involvement in
NRC Licensed Activities (Effective Immediately)

cc w/encl:
State of New Jersey

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

AHARON BEN-HAIM, PH.D.
Upper Montclair, New Jersey

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IA 97-065

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) PENDING FURTHER ORDER

I

Aharon Ben-Haim, Ph.D. (Dr. Ben-Haim), Medical Physicist, Upper Montclair, New Jersey, is a consultant for Newark Medical Associates, P.A. (licensee), the holder of Byproduct Nuclear Material License No. 29-30282-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of any radiopharmaceutical identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was originally issued on September 25, 1996, and is due to expire on September 30, 2001.

II

On January 29, 1997, the NRC conducted an inspection at the licensee's facility in Newark, New Jersey. During the inspection, several apparent violations of NRC requirements were identified. One of the violations involved the continued use of radioactive material by the licensee despite the fact that the only authorized user listed on the license (who was also listed as the Radiation Safety Officer (RSO)), had not ever performed any authorized user or RSO duties and had not ever been affiliated with the company. Specifically, Gerard W. Moskowitz, M.D. (Dr. Moskowitz), was listed on the application as the RSO and authorized user without his knowledge. Dr.

Moskowitz did not become aware that he was listed on the application and the license until notified by the NRC on February 6, 1997, more than four months after the license was originally issued.

Subsequent to the inspection, the NRC verified, based on an investigation by the NRC Office of Investigations (OI), that the licensee's letter, dated February 22, 1996, signed by Dr. Elamir, licensee President, transmitting the license application (NRC Form 313) dated February 2, 1996, was inaccurate in that it listed Dr. Moskowitz as the authorized user and Radiation Safety Officer without Dr. Moskowitz's consent or knowledge, and without Dr. Moskowitz ever having been affiliated or associated with the licensee. Further, Dr. Moskowitz did not ever perform the role of RSO at the licensee's facility. The NRC also learned that Dr. Ben-Haim, in his capacity as a consultant, had completed the license application for Dr. Elamir. As such, the licensee's application for a license to possess and use byproduct material was provided with information that was not complete and accurate in all material respects. These inaccurate statements in the licensee's application, signed by Dr. Elamir, and prepared by Dr. Ben-Haim, formed, in part, the basis for the issuance of the license to Newark Medical Associates on September 25, 1996. Further, the licensee continued to conduct NRC- licensed activities even though Dr. Ben-Haim, as the licensee consultant, knew that the licensee did not have an RSO.

III

Although the NRC staff's review of the results of the OI investigation is ongoing, the evidence that NRC has obtained indicates that Dr. Ben-Haim's actions in causing violations of NRC requirements were deliberate. The NRC must be able to rely on the licensee and its employees and consultants/contractors to comply with NRC requirements. Condition No. 13 of the license required that each use of material by the licensee be done by, or under the supervision of Dr. Moskowitz as the authorized user named therein. NRC requires that the RSO named on the license implement a radiation safety program as required by 10 CFR 35.21. NRC requires that all communications between the licensee and the NRC be complete and accurate in all material respects, pursuant to 10 CFR 30.9. Pursuant to 10 CFR 30.10, deliberate misconduct on the part of a licensee or its employee or contractor is prohibited. The term "deliberate misconduct" includes an intentional act that the person knows would violate a Commission requirement. The evidence to date demonstrates that Dr. Ben-Haim, acting in violation of 10 CFR 30.10, deliberately caused the licensee to be in violation of NRC requirements by the licensee's conducting licensed activities without the authorized user or RSO named on the license application and on the NRC license.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. Ben-Haim were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Ben-Haim be

prohibited from any involvement in NRC-licensed activities pending further order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Dr. Ben-Haim's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, Part 35, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY,

1. Pending further Order, Dr. Ben-Haim is prohibited from engaging in NRC-licensed activities. This prohibition applies to Dr. Ben-Haim as an employee, contractor, consultant, or other agent of a license and includes, but is not limited to: (1) any use of NRC-licensed materials; (2) supervising licensed activities, including (but not limited to) hiring of individuals engaged in licensed activities or directing or managing individuals engaged in licensed activities; (3) radiation safety activities including (but not limited to) functions of the Radiation Safety Officer; and (4) development of license applications, procedures, and policies to meet license requirements, providing training to meet license requirements, and providing professional services to meet license requirements. NRC-licensed activities are those activities that are conducted pursuant to a specific or general

license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. If Dr. Ben-Haim is currently involved in NRC-licensed activities other than at Newark Medical Associates, P.A., he must, as of the effective date of this Order: (1) immediately cease such activities; (2) inform the NRC of the name, address and telephone number of the NRC-licensed entity or entities where the activities are being conducted; and (3) provide a copy of this order to all such NRC-licensed entities.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV

In accordance with 10 CFR 2.202, Dr. Ben-Haim must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Dr. Ben-Haim may consent to this Order. Unless Dr. Ben-Haim consents to this Order, Dr. Ben-Haim shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this


Order and shall set forth the matters of fact and law on which Dr. Ben-Haim or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Ben-Haim if the answer or hearing request is by a person other than Dr. Ben-Haim. If a person other than Dr. Ben-Haim requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Ben-Haim or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Dr. Ben-Haim may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness

Dated at Rockville, Maryland
this 31st day of July 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 27, 1997

IA 97-068

Aharon Ben-Haim, Ph.D.
[Home Address Deleted
pursuant to 10 CFR 2.790]

SUBJECT: ORDER SUPERSEDING ORDER PROHIBITING INVOLVEMENT IN NRC LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)

Dear Dr. Ben-Haim:

On July 31, 1997 the NRC issued to you an Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) Pending Further Order (62 Fed Reg 43357). As further discussed in that Order, at the time, the NRC staff's review of the results of an investigation conducted by the NRC's Office of Investigations (OI) was ongoing. The NRC staff has now completed its review of the results of the OI investigation.

The enclosed Order Superseding Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) prohibits your involvement in NRC-licensed activities for a period of five years from July 31, 1997, because of your deliberate violations of NRC requirements, as more specifically set forth in Section III.A. of this Order.

The Order prohibits you from, among other things, engaging in licensed activities. This prohibition includes (but is not limited to) hiring, directing, or managing individuals engaged in licensed activities; developing license applications, procedures, and policies to meet license requirements; providing training to meet license requirements; and providing professional services to meet license requirements.

In accordance with the provisions in Section VI of the Order, you may request a hearing on the Order and you may move the presiding officer to set aside the immediate effectiveness of the Order. The Atomic Safety and Licensing Board designated to preside in the proceeding on the Order of July 31, 1997, has already granted a joint motion in which it set September 3, 1997, as the date by which you should move to set aside the immediate effectiveness of this Order. Please refer to Section VI for further information.

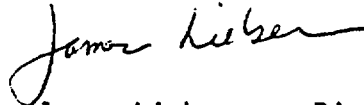
Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room.

Dr. Aharon Ben-Haim

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

Sincerely,

A handwritten signature in cursive script that reads "James Lieberman".

James Lieberman, Director
Office of Enforcement

Docket No. 030-34086
License No. 29-30282-01

Enclosure:
Order Superseding Order Prohibiting Involvement in
NRC Licensed Activities (Effective Immediately)

cc w/encl:
State of New Jersey

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
AHARON BEN-HAIM, PH.D.) IA 97-068
Upper Montclair, New Jersey)

ORDER SUPERSEDING ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES (EFFECTIVE IMMEDIATELY)

I

Aharon Ben-Haim, Ph.D. (Dr. Ben-Haim), Medical Physicist, Upper Montclair, New Jersey, is a contractor consultant for Newark Medical Associates, P.A. (licensee), the holder of Byproduct Nuclear Material License No. 29-30282-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of any radiopharmaceutical identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was originally issued on September 25, 1996, and is due to expire on September 30, 2001.

II

During a new license inspection conducted on January 29, 1997, at the licensee's facility, several apparent violations of NRC requirements were identified. Subsequent to the inspection, the NRC initiated an investigation which led the NRC to issue to Dr. Ben-Haim, on July 31, 1997, an Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) Pending Further Order (62 Fed Reg 43357). That Order was issued pending completion of the NRC staff review of the results of the investigation, which was conducted by the NRC's Office of Investigations (OI). The NRC staff's review of the results of the OI investigation is now complete.

The OI investigation focused in part on Dr. Ben-Haim's actions in causing the licensee to be in violation of NRC requirements. The NRC learned during the investigation that Dr. Ben-Haim, in his capacity as a contractor-consultant to the licensee, had prepared the license application (NRC Form 313) dated February 21, 1996, for Newark Medical Associates, and that the license application was inaccurate in that it named Gerard W. Moskowitz, M.D., (Dr. Moskowitz) as the only authorized user and Radiation Safety Officer (RSO) without Dr. Moskowitz's consent or knowledge, and without Dr. Moskowitz's ever having been affiliated or associated with the licensee. Dr. Moskowitz did not ever perform the role of authorized user or RSO at the licensee's facility, and did not become aware that he was listed on the application and the license until notified by the NRC on February 6, 1997, more than four months after the license was originally issued. These inaccurate statements in the license application prepared by Dr. Ben-Haim, formed, in part, the basis for the issuance of the license to Newark Medical Associates on September 25, 1996.

During the period from November 1997 through February 6, 1997, Dr. Ben-Haim, in his role as contractor-consultant to the licensee, aided and assisted the licensee in continuing to conduct NRC-licensed activities even though the licensee did not employ the authorized user or the RSO named in the license application and, subsequently, on the NRC license, nor did the named individual serve in these capacities. Based on the results of the OI investigation, the NRC has determined that Dr. Ben-Haim's actions constitute violations of 10 CFR 30.10, "Deliberate misconduct", as follows:

A. 10 CFR 30.10(a)(1), (c)(1) and (c)(2) require, in part, that any contractor of a licensee not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission; or any requirement, procedure, instruction, contract, purchase order or policy of a licensee.

1. 10 CFR 35.21 requires that a licensee appoint a Radiation Safety Officer responsible for implementing the radiation safety program; and requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

10 CFR 35.13 requires that a licensee apply for and receive a license amendment before it changes Radiation Safety Officers.

Byproduct Material License No. 29-30282-01, Condition 12, dated September 25, 1996 states that the Radiation Safety Officer for this License is Gerard W. Moskowitz, M.D.

During the period from November 1996 through February 6, 1997, Dr. Ben-Haim caused Newark Medical Associates to be in violation of the requirements in Section III.A.1 above by performing the functions of the Radiation Safety Officer (RSO), even though he

knew that: (1) the RSO named on the license application and, subsequently, on the license, was Gerard Moskowitz, M.D., and (2) he, Dr. Ben-Haim, was not the RSO named on the license application or the license.

2. 10 CFR 35.11(a) and (b) permit an individual to use licensed material for medical use only in accordance with a specific license issued by the Commission or under the supervision of an authorized user as provided in 10 CFR 35.25.

10 CFR 35.53(c)(3) requires, in part, that the licensee retain a record of the measurement of each dosage of a photon-emitting radionuclide prior to medical use to include, among other things, the prescribed dosage. Pursuant to 10 CFR 35.2: "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented in a written directive or diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user; "Written directive" means an order in writing for a specific patient dated and signed by an authorized user; "Diagnostic clinical procedures manual" means a collection of written procedures that includes, among other things, where each diagnostic procedure has been approved by the authorized user and the radiopharmaceutical, dosage, and route of administration; and "Authorized user" means a physician, dentist, or podiatrist who is (1) Board certified by at least one of the boards listed in Paragraph (a) of 10 CFR Part 35, sections 35.910,

35.920, 35.930, 35.940, 35.950, or 35.960, (2) identified as an authorized user on a Commission or Agreement State license that authorizes the medical use of byproduct material, or (3) identified as an authorized user on a permit issued by a Commission or Agreement State specific license of broad scope that is authorized to permit the medical use of byproduct material.

Byproduct Material License No. 29-30282-01, dated September 25, 1996, states in Condition 13, that licensed material is only authorized for use by, or under the supervision of, Gerard W. Moskowitz, M.D.

Byproduct Material License No. 29-30282-01, dated September 25, 1996, requires in part, in Condition 14, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the Application dated February 21, 1996. This application, which was prepared by Dr. Ben-Haim, requires, in Item 10.6, "Ordering and Receiving", that the licensee follow procedures in Appendix K to Regulatory Guide 10.8, Revision 2. The procedures in Appendix K require, in part, that the Radiation Safety Officer or a designee must authorize each order for radioactive materials and ensure that the requested materials and quantities are authorized by the license for use by the requesting authorized user.

During the period from November 1996 through February 6, 1997, Aharon Ben-Haim, who is not a physician, caused Newark Medical Associates to be in violation of the requirements in Section III.A.2 above by prescribing, in writing, the radiopharmaceuticals and dosages to be ordered and administered to patients by technologists for bone scans and cardiac images (which are medical uses), even though he knew that: (1) he was not an authorized user nor under the supervision of an authorized user; (2) he had prepared the Newark Medical Associates license application to specify the name of Gerard Moskowitz as the sole physician authorized user and Radiation Safety Officer; (3) Gerard Moskowitz, as the sole physician user named on the license, was the only individual who could prescribe a radiopharmaceutical and dosage for a technologist to administer to a patient; and (4) Gerard Moskowitz, as the Radiation Safety Officer named on the license, was the only individual who could authorize, or delegate to a technologist the authority to authorize, each order of byproduct material for medical use.

Based on the above, the NRC staff has concluded that Dr. Ben-Haim, acting as a contractor consultant to the licensee, deliberately caused the licensee to be in violation of NRC requirements by the licensee's conducting licensed activities without the authorized user or RSO named on the license application and on the NRC license. The NRC must be able to rely on the licensee and its contractors to comply with NRC requirements. Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public, including patients receiving radiation from byproduct material for medical purposes, will be protected if Dr. Ben-Haim is permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Ben-Haim be prohibited from any involvement in NRC-licensed activities for a period of five years. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Dr. Ben-Haim's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, Part 35, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY,

1. The Order of July 31, 1997, is superseded, in its entirety.
2. Dr. Ben-Haim is prohibited from engaging in NRC-licensed activities for a period of five years from July 31, 1997. This prohibition applies to Dr. Ben-Haim as an officer, employee, contractor, consultant, or other agent of a licensee and includes, but is not limited to: (1) any use of NRC-licensed materials; (2) supervising licensed activities, including (but not limited to) hiring of individuals engaged in licensed activities or directing or managing individuals engaged in licensed activities; (3) any involvement in radiation safety activities including (but not limited to) functions of the Radiation Safety Officer; and (4) development of license applications, procedures, and policies to meet license requirements, providing training to meet license requirements, and providing professional services to meet license requirements.
NRC-licensed activities are those activities that are conducted pursuant to a specific or general NRC license, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.
3. For those facilities, other than Newark Medical Associates, P.A., where Dr. Ben-Haim was involved in NRC-licensed activities as of July 31, 1997, Dr. Ben-Haim must: (1) immediately cease such activities; (2) inform the NRC of the name, address and telephone number of the NRC-licensed entities where the activities were being conducted; and (3) provide a copy of this order to all such NRC-licensed entities within five business days of any ruling by an NRC Atomic Safety and Licensing

Board upholding the immediate effectiveness of this requirement of this Order or, if Dr. Ben-Haim does not challenge the immediate effectiveness of this Order, within five business days of the termination of the time to request a hearing in Section VI of this Order.

4. For those facilities, other than Newark Medical Associates, P.A., where Dr. Ben-Haim was involved in NRC-licensed activities for the period beginning three years prior to the date of this Order, Dr. Ben-Haim must, within 30 days of the date of this Order, inform the NRC of the name, address and telephone number of the NRC-licensed entities where those activities were conducted.

5. For the five years immediately following the five year prohibition in paragraph V.2, the first time that Dr. Ben-Haim is employed or involved in NRC-licensed activities following the five year prohibition, he shall notify the Director, Office of Enforcement, at the address in Section VI below, within 20 days of engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. This notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed; and shall include a statement as to why the NRC should have confidence that Dr. Ben-Haim will not, in the future, commit deliberate violations of Commission requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

In accordance with 10 CFR 2.202, Dr. Ben-Haim must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, on or before September 19, 1997. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Dr. Ben-Haim may consent to this Order. Unless Dr. Ben-Haim consents to this Order, Dr. Ben-Haim shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Ben-Haim or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Atomic Safety and Licensing Board appointed to preside in this proceeding. Copies shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Ben-Haim if the answer or hearing request is by a person other than Dr. Ben-Haim. If a person other than Dr. Ben-Haim requests a hearing, that person shall set forth with particularity the manner

in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

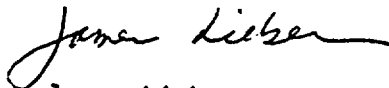
If a hearing is requested by Dr. Ben-Haim or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Dr. Ben-Haim may, in addition to demanding a hearing, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The Atomic Safety and Licensing Board designated to preside in the proceeding on the Order of July 31, 1997, has already granted a joint motion in which it set September 3, 1997, as the date by which Dr. Ben-Haim should move to set aside the immediate effectiveness of this Order.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final on September 19, 1997, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the

extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 27th day of August 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Shirley Ann Jackson, Chairman
Greta Joy Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

SERVED APR 26 1999

In the Matter of)

AHARON BEN-HAIM, Ph. D.)

Docket No. IA 97-068

CLI-99-14

MEMORANDUM AND ORDER

This proceeding stems from an August 27, 1997, enforcement order of the NRC staff against Aharon Ben-Haim, Ph. D. In that order, the staff found that Dr. Ben-Haim had deliberately caused the Newark Medical Associates ("NMA," a company for which Dr. Ben-Haim was consulting) to be in violation of several Commission requirements. The staff therefore found Dr. Ben-Haim in violation of 10 C.F.R. § 30.10 (the "deliberate misconduct" rule) and prohibited him from participating in any NRC-licensed activities for a five-year period beginning July 31, 1997. 62 Fed. Reg. 47,224 (Sept. 8, 1997).

On February 8, 1999, the Atomic Safety and Licensing Board issued an Initial Decision (LBP-99-4) affirming the NRC staff's findings of violation but reducing from five to three years the prohibition period. The Board based this reduction on its conclusion that the staff had not considered, either adequately or at all, five factors: Dr. Ben-Haim's age (65 at the onset of the suspension), his admission of error and his apology as set forth in a post-hearing pleading, the

OGC-99- 001963

absence of safety consequences from the violations, the violations' duration, and the fact that Dr. Ben-Haim's violation was influenced by Dr. Elamir (NMA's owner). The Board also considered the fact that the staff's settlement with Dr. Elamir (involving the same set of facts) had imposed on him only a three-year prohibition period.

On February 24th, the staff filed a timely petition for Commission review of LBP-99-4, challenging the Board's reduction of the prohibition period. Dr. Ben-Haim did not contest the staff's petition. However, he did submit his own untimely Petition for Review on March 14th, justifying his tardiness on the grounds that he had belatedly received the Board's order and that he had been incapacitated with the flu. Staff has objected to Dr. Ben-Haim's petition. We deny both petitions.

DISCUSSION

I. The Staff's Petition for Review

The staff recognizes that, to obtain Commission review, it must show the existence of a substantial question regarding one or more of the following five considerations:

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy, or discretion has been raised;
- (iv) The conduct of the proceeding involved prejudicial procedural error; or
- (v) Any other consideration which the Commission may deem to be in the public interest.

10 C.F.R. § 2.786(b)(4). Applying the standards of section 2.786(b)(4)(iii), (iv), and (v), the staff argues that the Board erred in considering the six factors set forth supra.

Although the staff presents colorable arguments (especially its assertion regarding the inappropriateness of the Board comparing a suspension period resulting from a settlement with one resulting from a hearing), the staff has not persuaded us that the issues themselves are

sufficiently "substantial" to justify our granting a discretionary review of LBP-99-4.¹ The Board's conclusion regarding a three-year suspension does not, on its face, appear unreasonable and, given that it was based in part on Dr. Ben-Haim's demeanor at the hearing (see 49 NRC at ___, slip op. at 87), it is subject to deference on appeal.² In any event, because the Board's order has no precedential effect, any arguably incorrect rulings by this Board will have no adverse effect on the staff in future enforcement proceedings. See Sequoyah Fuels Corp., CLI-95-2, 41 NRC 179, 190 (1995) ("Licensing Board decisions ... have no precedential effect beyond the immediate proceeding in which they were issued"). Under these circumstances, we do not consider it an appropriate use of the Commission's resources to set this case for briefing and to engage in a full review of the "penalty" portion of LBP-99-4.

II. Dr. Ben-Haim's Petition for Review

Dr. Ben-Haim in his petition objects principally to the Board's finding that he had "deliberately" caused the licensee NMA to be in violation of several of the Commission's requirements. He insists that his errors stemmed from an inadequate understanding of the regulations rather than from a conscious attempt to circumvent them. The remainder of his petition consists of either challenges to specific findings of fact or reiterations of his good intentions.

¹ 10 C.F.R. § 2.786(b)(4). See generally Emerick S. McDaniel (Denial of Application for Reactor Operator License), CLI-96-11, 44 NRC 229, 230 (1996) (denying reactor operator candidate's petition for review for failure to present substantial issues); Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-9, 44 NRC 112, 113 (1996) (denying intervenors' petition for review for failure to present substantial issues).

² See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1218 (1984) (where the credibility of evidence turns on the demeanor of a witness, an appellate board will give the judgment of the trial board, which saw and heard the testimony, particularly great deference), rev'd in part on other grounds, CLI-85-2, 21 NRC 282 (1985), and cited authority.

Dr. Ben-Haim does not attempt to satisfy the requirements of section 2.786(b)(4), supra, and our review of his pleading reveals no arguments that rise to the level of substantiality necessary for us to grant discretionary review. The Board's finding appears to be supported by the record, including Dr. Ben-Haim's own admissions, leaving us doubtful that any purpose would be served by plenary briefing and decision on the issues Dr. Ben-Haim raises.

CONCLUSION

The Commission denies the staff's and Dr. Ben-Haim's petitions for review.

IT IS SO ORDERED.



For the Commission

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook". The signature is written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 26th day of April, 1999.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

AHARON BEN-HAIM, PH.D.

(Superseding Order Prohibiting
Involvement in Licensed Activities)

Docket No.(s) IA 97-068

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM MEMO & ORDER (CLI-99-14) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Harry Rein
Special Assistant
ASLBP
1877 Wingfield Drive
Longwood, FL 32779

Catherine L. Marco, Esq.
Ann P. Hodgdon, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Aharon Ben-Haim, Ph.D.
3 Cloverhill Place
Montclair, NJ 07042

Dated at Rockville, Md. this
26 day of April 1999

Adrian T. Byrdson



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 5, 1997

IA 97-059

Ms. Sue A. Blacklock
HOME ADDRESS DELETED
UNDER 2.790

Dear Ms. Blacklock:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC Office of Investigations Report NO. 1-96-006)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you as a consequence of the findings by the NRC Office of Investigations (OI) that you deliberately directed falsification of Reactor Enclosure Cooling Water (RECW) sample documentation on February 7, 1996. The synopsis of the OI investigation was forwarded to you on May 21, 1997. The NRC has concluded that you violated 10 CFR 50.5(a)(1) which provides, in part, that an employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, order, or condition of the license. Specifically, your deliberate actions of directing the falsification of a record of a chemistry sample caused PECO Energy Company to violate 10 CFR 50.9. A predecisional enforcement conference was held with you on June 3, 1997 to discuss this apparent violation, its causes, and your corrective action.

The Order prohibits your involvement in NRC-licensed activities for a period of 5 years. In addition, subsequent to the 5-year period, the Order requires that you notify the NRC the first time you accept employment involving NRC-licensed activities or your becoming involved in NRC-licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

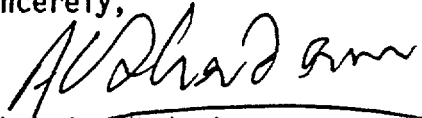
Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741. Also attached is a Proposed Notice of Violation and Proposed Imposition of Civil Penalty issued on this date to PECO Energy Company for the falsification of records that was based, in part, on your deliberate actions.

Ms. Sue A. Blacklock

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



Ashok C. Thadani
Acting Deputy Executive Director
for Regulatory Effectiveness

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
(Effective Immediately)
2. Notice of Violation and Proposed Imposition of Civil Penalty
to PECO Energy Company

cc w/encl:

D. M. Smith, President, PECO Nuclear
Commonwealth of Pennsylvania

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MS. SUSAN A. BLACKLOCK

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)
)
)

IA 97-059

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Ms. Sue A. Blacklock (Ms. Blacklock) was formerly employed by PECO Energy Company at the Limerick Generating Station (PECO, Limerick, or Licensee) as the Primary Chemistry Manager. PECO holds Facility License Nos. NPF-39 and NPF-84 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize PECO to operate the Limerick Station, Units 1 and 2, in accordance with the conditions specified therein.

II

On February 7, 1996, while a Reactor Enclosure Cooling Water (RECW) radiation monitor was inoperable, the Licensee was required, in accordance with Technical Specification 3.3.7.1, ACTION 72, to obtain and analyze at least one grab sample from the RECW system at least once per 24 hours. On that date, the sample needed to be taken by 11:00 a.m. to meet that requirement. The sample was not taken until 12:15 p.m. on that date, approximately 1 hour and 15 minutes after the time it was due. However, the record of the grab sample RECW Surveillance Test (ST-5-026-570-1, "Inop Reactor Enclosure Cooling Water Rad Mon Grab Sampling and Analysis"), signed by a chemistry technician and the chemist (as chemistry supervision), was inaccurate because (1) page one of

attachment 1 of the test record indicated that the time of the sample was 11:00 a.m., and (2) the attached computer printout of the Gamma Spectrum Analysis (required by step 4.3.1 of the surveillance test) also indicated that the sample was taken at 11:00 a.m.. The creation of this inaccurate record caused the Licensee to be in violation of 10 CFR 50.9, "Completeness and accuracy of information."

Afterwards, an investigation of this matter was conducted by PECO, and the NRC was informed of the findings. Subsequently, an investigation was conducted by the NRC Office of Investigations (OI), that determined, based upon the evidence developed during its investigation, and a review of evidence contained in the investigation report provided by PECO, that on February 7, 1996, the former PECO chemist and the PECO chemistry technician deliberately falsified RECW sample documentation, at the direction of Ms. Blacklock, the former PECO Primary Chemistry Manager.

Ms. Blacklock denied, both in her November 7, 1996, interview with OI, as well as during a June 3, 1997 predecisional enforcement conference with the NRC, that she had instructed the chemistry technician to rewrite the surveillance test, and also denied that she had instructed the chemist to change the sample time in the computer. Notwithstanding that denial, both the chemistry technician and the chemist stated in their interviews with OI, that it was Ms. Blacklock's idea to rewrite the surveillance test document and that she subsequently ordered that the sample time in the computer be changed. In addition, the original data sheet corroborates that the chemistry technician originally entered the proper sample time as 12:15 p.m.. Therefore, contrary

to the Ms. Blacklock's denials, the NRC has concluded that Ms. Blacklock instructed the former PECO chemist and chemistry technician to falsify the RECW sample documentation.

III

Based on the above, the NRC has concluded that Ms. Blacklock engaged in deliberate misconduct by directing falsification of the time of the RECW grab sample. Ms. Blacklock's actions constitute a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In this case, Ms. Blacklock caused the Licensee to be in violation of 10 CFR 50.9, "Completeness and accuracy of information."

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements, including the requirement to maintain information that is complete and accurate in all material respects. Ms. Blacklock's action in directing falsification of records, and her collusion with others to hide that falsification, constitutes a deliberate violation of Commission regulations, and her doing so raises serious doubt as to whether she can be relied upon to comply with NRC requirements and to maintain complete and accurate information for NRC Licensees and Licensee contractors in the future, and raises doubt about her trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Ms. Blacklock were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Ms. Blacklock be prohibited from any involvement in NRC-licensed activities for a period of 5 years from the date of this Order, and if Ms. Blacklock is currently involved with another licensee in NRC-licensed activities, Ms. Blacklock must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Ms. Blacklock is required to notify the NRC of her first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Ms. Blacklock's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Sue A. Blacklock is prohibited from engaging in activities licensed by the NRC for 5 years from the date of this Order. NRC-licensed

activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. After the 5-year period of prohibition has expired, Ms. Blacklock shall, within 20 days of her acceptance of the first employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in the NRC-licensed activities. In the notification, Ms. Blacklock shall include a statement of her commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Ms. Blacklock of good cause.

V

In accordance with 10 CFR 2.202, Ms. Blacklock must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time

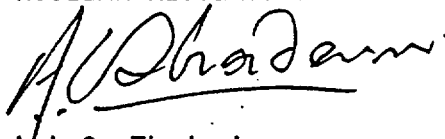
to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Blacklock or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Ms. Blacklock if the answer or hearing request is by a person other than Ms. Blacklock. If a person other than Ms. Blacklock requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Blacklock or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ms. Blacklock may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Ashok C. Thadani
Acting Deputy Executive Director
for Regulatory Effectiveness

Dated at Rockville, Maryland
this 5th day of August 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 10, 1998

IA 98-019

Mr. John Boschuk Jr.
c/o J&L Testing Company, Inc.
938 South Central Avenue
Canonsburg, Pennsylvania 15317

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Office of Investigation Report No. 1-95-044)**

Dear Mr. Boschuk:

The enclosed Order Prohibiting Involvement in NRC Licensed Activities prohibits your involvement in NRC-licensed activities for a period of five years from this date because of your violation of NRC requirements as President and owner of J&L Engineering Company, and as an agent for and a consultant to J&L Testing Company, Inc. The NRC concludes that you deliberately violated NRC regulations, and otherwise committed willful violations of NRC requirements, as set forth in the enclosed Order, as well as the Order Revoking License concurrently issued to JLT on this date.. The Order, among other things, prohibits you from engaging in licensed activities.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room. Questions concerning these actions should be addressed to me and I can be reached at (301) 415-2741.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosure:

1. Order Prohibiting Involvement in Licensed Activities
2. Order Revoking License

cc w/encls:

Commonwealth of Pennsylvania
State of New York
State of Illinois (Bruce Sanza)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

John Boschuk, Jr.
Canonsburg, Pennsylvania

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IA 98-019

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37-28442-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995. Lourdes T. Boschuk is the President and owner of JLT. John Boschuk, Jr. has acted as an agent for and consultant to JLT in the conduct of its licensed activities. Mr. Boschuk, the husband of Lourdes Boschuk, is also the President and owner of J&L Engineering Company (JLE) located on the same premises. JLE held NRC Materials License No. 37-28442-01, which authorized use and possession of the same sealed sources, until the license was revoked by the NRC on July 30, 1993, for non-payment of fees. Concurrently with this Order, the NRC is issuing an Order Revoking License to JLT (EA 96-110).

Based on an NRC inspection and an investigation by the NRC's Office of Investigations, the NRC has determined that John Boschuk, Jr., while serving as President and owner of JLE and as an agent for and consultant to JLT, engaged in a pattern and practice of willfully violating NRC requirements. Among such violations are the following:

A. Unauthorized Transfer of Byproduct Material

The August 30, 1993, Order Revoking License required JLE, among other things, to cease use of byproduct material, dispose of the byproduct material, and to notify the NRC of the disposition within 30 days. Nonetheless, JLE continued to possess the material. Consequently, the NRC staff again transmitted a copy of the Order Revoking License to JLE on August 9, 1994, and a letter to Mr. Boschuk on August 18, 1994. The August 18, 1994, letter reminded Mr. Boschuk that continued possession of the material without a valid license is a violation of 10 CFR 30.3, and that he must immediately place the material in secure storage until a valid license is acquired and that any other use is not authorized. During a telephone call on August 12, 1994, Mr. Boschuk had informed the NRC staff that he intended to promptly file an application for a new license.

Nonetheless, as President of and owner JLE, and as an agent for JLT, Mr. Boschuk transferred a Troxler gauge on or about September 2, 1994, to SE Technologies, Inc., of Bridgeville, Pennsylvania, in violation of the Order Revoking License dated July 30, 1993, and 10 CFR 30.3. As stated by the Chief Engineer of SE Technologies, Inc., Mr.

Boschuk had arranged for the rental, and as stated by a Project Engineer of SE Technologies, Inc., Mr. Boschuk had personally transferred the gauge to SE Technologies, Inc. Accordingly, Mr. Boschuk deliberately violated the Order Revoking License and 10 CFR 30.3, in violation of 10 CFR 30.10(a).

B. Materially Inaccurate Statements Made to NRC

- (1) A letter to the NRC dated October 11, 1994, signed by Mr. Boschuk as President of JLE, stated that the three Troxler gauges had not been used for over two years and had not left the storage area of JLE's office. In fact, Mr. Boschuk had deliberately transferred one of the gauges in violation of the Order Revoking License and 10 CFR 30.3 on September 2, 1994, as explained above. This statement was deliberately inaccurate in violation of 10 CFR 30.9(a) and 30.10(a)(2).

In addition, JLT admittedly used the Troxler density gauges on four occasions after revocation of the JLE license and before the NRC issued a license to JLT on February 7, 1995. Specifically, JLT used the gauge(s) for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. Lourdes Boschuk also stated at a December 18, 1997, predecisional enforcement conference that she did not get the keys from JLE for the gauges until February 1995. The statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had

not left storage, was materially inaccurate in violation of 10 CFR 30.9(a) and was made by Mr. Boschuk with at least careless disregard for the facts with respect to such usage.

- (2) Figure 1 of the November 21, 1994, JLT application, revised January 6, 1995, depicted a locked steel cabinet on the JLT premises as the storage site for the three Troxler gauges. However, the cabinet did not have a lock. Mr. Boschuk prepared Figure 1. This materially inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard for the facts by Mr. Boschuk.

- (3) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk and reviewed and edited by Mr. Boschuk, stated that the Troxler gauge which was missing at the time of the NRC inspection on August 1, 1995 was in Watertown, New York; was returned the next day to JLT. In fact, according to the Chief Engineer of SE Technologies, Inc., Mr. Boschuk personally transferred the gauge to SE Technologies, Inc. in July 1995, and requested return of the gauge on August 14 or 15, 1995. In fact the gauge was not returned to JLT until August 17, 1995. This was a deliberately inaccurate statement by Mr. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a).

In addition, the letter represented that since the August 1995 NRC inspection, all three Troxler gauges had been kept in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the

NRC inspection report were resolved. This inaccurate statement in violation of 10 CFR 30.9(a) was made by Mr. Boschuk with careless disregard for the facts. In fact, one of the gauges was transferred on September 6, 1995, to Cashin Associates, P.C., and was not returned to JLT until September 19 or 20, 1995.

- (4) A letter dated September 18, 1995, signed by Lourdes Boschuk for JLT and prepared by Mr. Boschuk as an agent for and consultant to JLT, and sent to the NRC in response to the NRC's September 15, 1995, letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, made several materially inaccurate statements. The letter stated that all JLT's gauges had been in locked storage since the August 1995 NRC inspection. This was a deliberately inaccurate statement by Mr. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Mr. Boschuk learned from Lourdes Boschuk no later than the weekend ending September 17, 1995, that a gauge had been recently transferred to Cashin Associates, P.C. As explained above, Mr. Boschuk also knew that the gauge had been transferred to SE Technologies, Inc., between July 18 and August 17, 1995, although the NRC inspection ended on August 3, 1995.

In addition, the letter stated that all three JLT Troxler gauges are currently locked in the designated storage cabinet on JLT's premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and made with at least careless disregard as to its truth or falsity by Mr. Boschuk. Mr. Boschuk stated at a December 18,

1997, predecisional enforcement conference that although he checked the storage cabinet before preparing the letter, and saw three yellow cases which he assumed contained the gauges, he did not look inside the cases to verify the gauges were there. In fact, the gauge which had been transferred to Cashin Associates, P.C. was not returned to JLT until September 19 or 20, 1995.

C. Destruction of Records Relating to Gauge Usage

According to a witness, John Boschuk, Jr. and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995 enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were "thrown away during sanitization of records?" Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the

gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of the 10 CFR 30.3 and 30.9(a). The participation of Mr. Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

III

Based on the above, the NRC concludes that John Boschuk, Jr., President and owner of JLE and an agent of and a consultant to JLT, deliberately violated NRC regulations and otherwise committed willful violations of NRC requirements. These violations raise a serious doubt as to whether Mr. Boschuk can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. The NRC must rely upon the integrity of persons involved in licensed activities, especially owners and officials of NRC licensees. Deliberate misconduct of the type demonstrated by Mr. Boschuk cannot be tolerated. Notwithstanding the revocation of the JLE and JLT licenses, given Mr. Boschuk's repeated failures to adhere to regulatory requirements, the NRC no longer has the necessary assurance that Mr. Boschuk's activities, if performed under an NRC license, would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Boschuk were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Boschuk be prohibited from any involvement in NRC-licensed activities for a period of five years from the

date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee. Additionally, Mr. Boschuk is required to notify the NRC of his first employment or involvement in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. For a period of five years from the date of this Order, Mr. Boschuk is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.
2. For a period of five years from the date of this Order, Mr. Boschuk shall provide a copy of this Order to any prospective employer or business partner who engages in NRC-licensed activities (as described in Section IV.1 above) prior to his acceptance of any employment (whether involved in licensed activities or not) by, or acquisition of partnership or ownership interest in, a licensee (as described in Section IV.1 above).
The purpose of this requirement is to ensure that the licensee is aware of Mr. Boschuk's

prohibition from engaging in NRC-licensed activities.

3. The first time Mr. Boschuk is employed in NRC-licensed activities, or acquires an interest in a licensee (as described in Section IV.1 above), following the five year prohibition, he shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, prior to acquiring such an interest or engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Mr. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under-oath or affirmation, specifically admit or deny each allegation or charge made

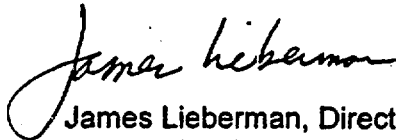
in this Order and shall set forth the matters of fact and law on which Mr. Boschuk or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Boschuk, if the answer or hearing request is by a person other than Mr. Boschuk. If a person other than Mr. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Boschuk or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the

date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 0th day of April 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
LBNP
LBP-98-15

ATOMIC SAFETY-AND-LICENSING BOARD

'98 AUG -5 A11 :48

Before Administrative Judges:

OFFICE OF THE
RULES
ADMINISTRATIVE

G. Paul Bollwerk, III, Chairman
Frederick J. Shon
Thomas D. Murphy

SERVED AUG - 5 1998

In the Matter of

JOHN BOSCHUK, JR.

(Order Prohibiting
Involvement in
NRC-Licensed Activities)

Docket No. IA 98-19

ASLBP No. 98-741-03-EA

August 5, 1998

MEMORANDUM AND ORDER
(Approving Settlement Agreement
and Dismissing Proceeding)

In a joint motion filed July 31, 1998, petitioner John Boschuk, Jr., and the NRC staff ask the Licensing Board to approve an attached settlement agreement and dismiss this proceeding. Finding their settlement accord is consistent with the public interest, we approve the agreement and terminate this case.

At issue in this proceeding is an April 10, 1998 staff enforcement order issued in connection with Mr. Boschuk's activities while acting as president and owner of J&L Engineering Company (JLE) and as an agent for and consultant to J&L Testing Company (JLT).¹ JLE was the prior holder,

¹ Mr. Boschuk is the spouse of JLT president and owner Lourdes T. Boschuk, who also was the subject of a staff
(continued...)

and JLT is the present holder, of an NRC byproduct materials license that authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources.² The staff order (1) precludes Mr. Boschuk for a period of five years from the date of the order from any involvement in NRC-licensed activities (including activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to 10 C.F.R. § 150.20); (2) requires that within the five-year period he must provide a copy of the order to any prospective employer or business partner who engages in NRC-licensed activities prior to accepting any employment or obtaining a partnership or ownership interest in such a licensed entity; and (3) mandates that following the five-year period he must notify the Regional Administrator of NRC Region I prior to the first time he engages in NRC-licensed activities or obtains an interest in an NRC-licensed entity. As the basis for its order, the staff relies on Mr. Boschuk's alleged (1) unauthorized transfer of

¹(...continued)
enforcement order in connection with her activities regarding the JLT license. See 63 Fed. Reg. 19,525 (1998). A Board issuance approving a settlement agreement and terminating an adjudicatory proceeding regarding that staff order also is being issued this date. See LBP-98-16, 48 NRC ____ (Aug. 5, 1998).

² Concurrently with the order directed to Mr. Boschuk, the staff issued an order revoking the JLT license. See 63 Fed. Reg. 19,529 (1998). In an answer dated April 30, 1998, the licensee consented to revocation of the license.

byproduct material; (2) materially inaccurate statements to the NRC regarding use and storage of the Troxler gauges; and (3) improper destruction of records relating to gauge use. See 63 Fed. Reg. 19,522, 19,522-24 (1998).

In an answer submitted April 30, 1998, Mr. Boschuk denied that he willfully violated NRC requirements relative to the staff's allegations and requested a hearing to contest the staff's April 1998 order. After being appointed to conduct this adjudicatory proceeding, see 63 id. 28,526 (1998), in a May 21, 1998 initial prehearing order this Board requested a joint report from Mr. Boschuk and the staff that, among other things, set forth the status of any settlement discussions between them. On June 15, 1998, and again on July 1, 1998, the participants provided joint reports that stated they were engaged in settlement negotiations and requested the proceeding be held in abeyance pending the outcome of those discussions. Thereafter, the participants filed the joint settlement motion now before us.

Under the terms of the July 30, 1998 settlement agreement, the staff agrees to modify the April 1998 enforcement order to reduce from five to two and one-half years (specifically, until September 27, 2000) (1) the term of the prohibition on Mr. Boschuk having any involvement in NRC-licensed activities; and (2) the period during which Mr. Boschuk is required to provide a copy of the agency's

enforcement order to employers or business partners. The order's requirement for post-prohibition notification of the Regional Administrator is not retained under the settlement agreement. The staff also agrees not to take any further enforcement action against Mr. Boschuk based on the facts outlined in the April 1998 order. In turn, Mr. Boschuk agrees to withdraw his hearing request and waives any right to appeal or contest the settlement agreement once it is approved by this Board. Both participants agree there has not been any adjudication of wrongdoing by Mr. Boschuk and the settlement agreement is not to be construed as an admission of wrongdoing by Mr. Boschuk or a concession of no wrongdoing or lack of agency jurisdiction by the staff.

Pursuant to subsections (b) and (c) of section 161 of the Atomic Energy Act of 1954, 42 U.S.C. § 2201(b), (c), and 10 C.F.R. § 2.203, we have reviewed the participants' joint settlement agreement to determine whether approval of the agreement and termination of this proceeding is in the public interest. Based on that review, and according due weight to the position of the staff, we have concluded both actions are consonant with the public interest. We thus

grant the participants' joint motion to approve the settlement agreement and dismiss this proceeding.

For the foregoing reasons, it is this fifth day of August 1998, ORDERED, that:

1. The July 31, 1998 joint motion of John Boschuk, Jr., and the staff is granted and we approve their July 30, 1998 "Settlement Agreement," which is attached to and incorporated by reference in this memorandum and order.

2. This proceeding is dismissed.

THE ATOMIC SAFETY
AND LICENSING BOARD³



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE



Frederick J. Shon
ADMINISTRATIVE JUDGE



Thomas D. Murphy
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 5, 1998

³ Copies of this memorandum and order and the accompanying attachment were sent this date to counsel for petitioner John Boschuk, Jr., by Internet e-mail transmission; and to counsel for the NRC staff by e-mail through the agency's wide area network system.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
JOHN BOSCHUK, JR.) Docket No. IA 98-19
)
(Order Prohibiting Involvement in)
NRC-Licensed Activities))

SETTLEMENT AGREEMENT

On April 10, 1998, the staff of the Nuclear Regulatory Commission (Staff) issued an "Order Prohibiting Involvement in NRC-Licensed Activities" ("Order") captioned "IA 98-19" to John Boschuk, Jr. (hereafter "Mr. Boschuk"). See 63 Fed. Reg. 19,522 (April 20, 1998). On April 30, 1998, Mr. Boschuk answered the Order, denying that he engaged in a pattern and practice of willfully violating NRC requirements and requesting a hearing.

The parties to the above-captioned proceeding, the Staff and Mr. Boschuk, agree that it is in the public interest to terminate this proceeding without further litigation and without reaching the merits of the Order, subject to the approval of the Atomic Safety and Licensing Board.

NOW THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Mr. Boschuk agrees to withdraw his request for a hearing, dated April 30, 1998, and otherwise waive his right to a hearing in connection with this matter, and waive any right to contest or otherwise appeal this Settlement Agreement once approved by the Atomic Safety and Licensing Board. Such withdrawal and waiver will become effective only upon approval of this Settlement Agreement by the Atomic Safety and Licensing Board.

2. Mr. Boschuk agrees to refrain from engaging in NRC-licensed activities until September 27, 2000. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 C.F.R. § 150.20.

3. Mr. Boschuk agrees, that until September 27, 2000, he will

a. immediately provide a copy of this Settlement Agreement to any employer or other person who directs or requests Mr. Boschuk to perform duties involved in NRC-licensed activities as described in paragraph 2, above. The purpose of this requirement is to ensure that the employer or business partner is aware of the prohibition on Mr. Boschuk from engaging in NRC-licensed activities; and

b. provide a copy of this Settlement Agreement to any NRC licensee prior to acquisition of an ownership or partnership interest in such licensee. The purpose of this requirement is to ensure that the NRC licensee is aware of the prohibition on Mr. Boschuk from engaging in NRC-licensed activities. This requirement does not apply to the purchase of stock in a licensee whose shares are publicly traded.

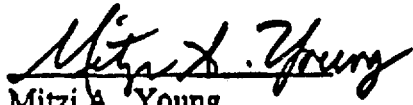
4. In consideration of Mr. Boschuk's agreement in paragraphs 1-3 of this Settlement Agreement and Mr. Boschuk's statement in paragraph IV.1 of his April 30, 1998 answer (sworn to in an affidavit appended thereto) that he has complied with the September 27, 1995 Suspension Order, the Staff hereby modifies paragraphs III, IV.1, IV.2, and IV.3 of the Order consistent with paragraphs 2-3 above, however, all other provisions of the Order shall remain in effect. The Staff further agrees not to take any further enforcement action against Mr. Boschuk based on the facts outlined in the Order. In the event that Mr. Boschuk fails to comply with the conditions set forth in paragraphs 1-3 of this Settlement Agreement, the Staff expressly reserves the right to take whatever action necessary and appropriate to enforce the terms of this Settlement Agreement.

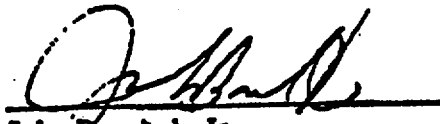
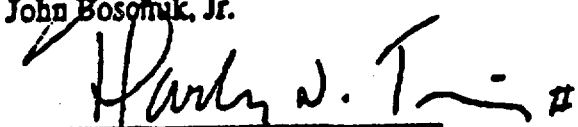
5. The Staff and Mr. Boschuk understand and agree that this Settlement is limited to the issues in and the parties to the above-captioned proceeding.

6. Mr. Boschuk and the Staff (hereafter collectively referred to as "the parties") agree to file a joint motion requesting the Board to approve this Settlement Agreement and terminate the proceeding, pursuant to the Commission's regulations in 10 C.F.R. § 2.203. If this Settlement Agreement is not approved or is changed in any substantive manner by the Board, this Settlement Agreement may be voided by any party by giving written notice to the parties and the Board. The parties agree that under these circumstances and upon request they will negotiate in good faith to resolve differences.

7. The Staff and Mr. Boschuk agree and acknowledge that there has not been any adjudication of any wrongdoing by Mr. Boschuk and that this Settlement Agreement is the result of a compromise and shall not for any purpose be construed: (a) as an admission by Mr. Boschuk of any wrongdoing; or (b) as a concession by the NRC Staff that no violation or wrongdoing occurred or that the NRC lacks jurisdiction to issue orders to Mr. Boschuk.

IN WITNESS WHEREOF, Mr. Boschuk and the Staff have caused this Settlement Agreement to be executed by the parties or their duly authorized representatives on this 30th day of July, 1998.


Mitzi A. Young
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555


John Boschuk, Jr.

Harley N. Trice, II
Counsel for John Boschuk, Jr.
Reed Smith Law & McClay LLP
435 Sixth Avenue
Pittsburgh, PA 15219-1886

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

JOHN BOSCHUK, JR.

(Order Prohibiting Involvement in
NRC-Licensed Activities)

Docket No.(s) IA 98-19

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-98-15) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Frederick J. Shon
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mitzi A. Young, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Harley N. Trice II, Esq.
Reed Smith Shaw & McClay LLP
435 Sixth Avenue
Pittsburgh, PA 15219

Dated at Rockville, Md. this
5 day of August 1998

Adria T. Byrdson
Office of the Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 10, 1998

IA 98-020

Ms. Lourdes T. Boschuk, President
c/o J&L Testing Company, Inc.
938 South Central Avenue
Canonsburg, Pennsylvania 15317

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Office of Investigations Report No. 1-95-044)**

Dear Ms. Boschuk:

The enclosed Order Prohibiting Involvement in NRC Licensed Activities (Order) prohibits your involvement in NRC-licensed activities for a period of five years from this date because of your violations of NRC requirements, committed while the President and owner of J&L Testing Company, Inc. (JLT). The NRC has found that you deliberately violated NRC requirements, and otherwise committed willful violations of NRC requirements, as specifically set forth in the enclosed Order, as well as the Order Revoking License issued to JLT concurrently on this date. This Order, among other things, prohibits you from engaging in licensed activities.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room. Questions concerning these actions should be addressed to me and I can be reached at (301) 415-2741.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order Prohibiting Involvement in NRC Licensed Activities
2. Order Revoking License to JLT

cc w/encs:

Commonwealth of Pennsylvania
State of New York
State of Illinois (Bruce Sanza)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Lourdes T. Boschuk
Canonsburg, Pennsylvania

)
)
)
)

IA 98-020

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37-28442-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995. Lourdes T. Boschuk is the President and owner of JLT. Concurrently with this Order, the NRC is issuing an Order Revoking License to JLT (EA 96-110).

II

Based on an NRC inspection and an investigation by the NRC's Office of Investigations, the NRC has determined that Ms. Boschuk, while President and owner of JLT¹, engaged in a pattern and practice of willfully violating NRC requirements and otherwise violated NRC requirements. Among such violations are the following:

¹ Lourdes Boschuk is the wife of John Boschuk, Jr., President and Owner of J&L Engineering, Inc. (JLE). JLT and JLE are located at the same address and share the same telephone and facsimile numbers.

A. Materially Inaccurate Statements Made to NRC

- (1) A letter accompanying JLT's Application for Material License for Troxler Nuclear Density Gauges, dated November 21, 1994, and signed by Lourdes Boschuk as President of JLT, represented to the NRC that since the revocation of J&L Engineering's License to operate the same Troxler gauges on August 30, 1993, the gauges had not been removed from storage or used in any way. In fact, JLT admittedly used a gauge on at least four occasions and invoiced customers for that use after revocation of the JLE license and before the NRC issued a license to JLT. JLT used the gauge for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. The materially inaccurate statement in the JLT application was in violation of 10 CFR 30.9(a) and made with careless disregard for the facts by Ms. Boschuk..**

- (2) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk as President of JLT, stated that the Troxler gauge that was missing at the time of the NRC inspection on August 1, 1995, was in Watertown, New York; and was returned the next day. In fact, the gauge was transferred to SE Technologies, Inc., located in Bridgeville, Pennsylvania, in July 1995 and was not returned to JLT until August 17, 1995. This statement was in violation of 10 CFR 30.9(a) and was made with careless disregard for the facts by Ms. Boschuk. In addition, the letter represented that since the NRC inspection on August 1, 1995, all three Troxler gauges were located in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC's Inspection**

Report were resolved. In fact, one of the gauges had been transferred on September 6, 1995, to Cashin Associates, P.C. in New York State, and was not returned to JLT until September 19 or 20, 1995. This was an inaccurate statement in violation of 10 CFR 30.9(a) and was made by Ms. Boschuk with careless disregard for the facts.

- (3) During an enforcement conference with the NRC on September 15, 1995, Lourdes Boschuk, as President of JLT, stated that JLT's operable Troxler gauge was in storage and had not been used. In fact, one of the gauges was transferred by JLT on September 6, 1995, to Cashin Associates, P.C. for use at the Brookhaven Landfill in New York State, and was not returned to JLT until September 19 or 20, 1995. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made by Ms. Boschuk with careless disregard for the facts.
- (4) A letter to the NRC dated September 18, 1995, signed by Lourdes Boschuk as President of JLT, and sent to the NRC in response to the September 15, 1995, NRC letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, made several materially inaccurate statements. The letter stated that all JLT's gauges have been in the storage cabinet on the JLT premises since the visit of the NRC inspector. This was a deliberately inaccurate statement by Ms. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Ms. Boschuk knew no later than September 15, 1995, during a telephone call with the Director of JLT, immediately after the September 15, 1995 enforcement conference, that one of JLT's Troxler gauges had been

transferred on September 6, 1995 to Cashin Associates, P.C. in New York State.

In addition, the letter stated that all three JLT Troxler gauges are currently locked in the designated storage cabinet on the JLT premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard as to its truth or falsity by Ms. Boschuk. In fact, Lourdes Boschuk sent the JLT RSO to retrieve the gauge which had been transferred to Cashin Associates, P.C., but the RSO did not return to JLT with the gauge until late in the evening of September 19 or early in the morning of September 20, 1995.

B. Destruction of Records Relating to Gauge Usage

According to a witness, Lourdes Boschuk and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995 enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were "thrown away during sanitization of records?" Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer

find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of the 10 CFR 30.3 and 30.9(a). The participation of Lourdes Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

III

Based on the above, the NRC concludes that Lourdes Boschuk, President and owner of JLT, deliberately violated NRC requirements, and otherwise committed willful violations of NRC requirements. These violations raise a serious doubt as to whether Ms. Boschuk can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. The NRC must rely upon the integrity of persons involved in licensed activities, especially owners and officials of NRC licensees. Deliberate misconduct of the type demonstrated by Ms. Boschuk cannot be tolerated. Notwithstanding the revocation of the JLT license, given Ms. Boschuk's repeated failures to adhere to regulatory requirements, the NRC no longer has the necessary assurance that Ms. Boschuk's participation in licensed activities would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Ms. Boschuk were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Ms. Boschuk be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if she is currently involved with another licensee in NRC-licensed activities, she must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee. Additionally, Ms. Boschuk is required to notify the NRC of her first employment or involvement in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. For a period of five years from the date of this Order, Ms. Boschuk is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years from the date of this Order, Ms. Boschuk shall provide a copy of this Order to any prospective employer or business partner who engages in NRC-licensed activities (as described in Section IV.1 above) prior to her acceptance of any employment (whether involved in licensed activities or not) by, or partnership or ownership interest in, a licensee (as described in Section IV.1 above). The purpose of this requirement is to ensure that the licensee is aware of Ms. Boschuk's prohibition from engaging in NRC-licensed activities.

3. The first time Ms. Boschuk is employed in NRC-licensed activities, or acquires a partnership or ownership interest in a licensee (as described in Section IV.1 above), following the five year prohibition in Section IV.1, above, she shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, prior to acquiring such an interest or prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.


In accordance with 10 CFR 2.202, Ms. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Boschuk or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, to Ms. Boschuk if the answer or hearing request is by a person other than Ms. Boschuk. If a person other than Ms. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Boschuk or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be ___

sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 0th day of April 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
15:10
LBP-98-16

ATOMIC SAFETY AND LICENSING BOARD

'98 AUG -5 11:49

Before Administrative Judges:

OFFICE
FILE
ADJUDICATOR

G. Paul Bollwerk, III, Chairman
Frederick J. Shon
Thomas D. Murphy

SERVED AUG - 5 1998

In the Matter of
LOURDES T. BOSCHUK
(Order Prohibiting
Involvement in
NRC-Licensed Activities)

Docket No. IA 98-20

ASLBP No. 98-742-04-EA

August 5, 1998

MEMORANDUM AND ORDER
(Approving Settlement Agreement
and Dismissing Proceeding)

In a joint motion filed July 31, 1998, petitioner Lourdes T. Boschuk and the NRC staff ask the Licensing Board to approve an attached settlement agreement and dismiss this proceeding. Finding their settlement accord is consistent with the public interest, we approve the agreement and terminate this case.

At issue in this proceeding is an April 10, 1998 staff enforcement order issued in connection with Ms. Boschuk's activities while acting as president and owner of J&L Testing Company (JLT).¹ JLT was the holder of an NRC

¹ Ms. Boschuk is the spouse of John Boschuk, Jr., who also was the subject of a staff enforcement order regarding his activities relating to JLT. See 63 Fed. Reg. 19,522 (1998). A Board issuance approving a settlement agreement

(continued...)

byproduct materials license that authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources.² The staff order (1) precludes Ms. Boschuk for a period of five years from the date of the order from any involvement in NRC-licensed activities (including activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to 10 C.F.R. § 150.20); (2) requires that within the five-year period she must provide a copy of the order to any prospective employer or business partner who engages in NRC-licensed activities prior to accepting any employment or obtaining a partnership or ownership interest in such a licensed entity; and (3) mandates that following the five-year period she must notify the Regional Administrator of NRC Region I prior to the first time she engages in NRC-licensed activities or obtains an interest in an NRC-licensed entity. As the basis for its order, the staff relies on Ms. Boschuk's alleged (1) materially inaccurate statements to the NRC regarding use and storage of the Troxler gauges; and (2) improper destruction of records

¹(...continued)
and terminating an adjudicatory proceeding regarding that staff order also is being issued this date. See LBP-98-15, 48 NRC ____ (Aug. 5, 1998).

² Concurrently with the order directed to Ms. Boschuk, the staff issued an order revoking the JLT license. See 63 Fed. Reg. 19,529 (1998). In an submitted April 30, 1998, the licensee consented to revocation of the license.

relating to gauge use. See 63 Fed. Reg. 19,525, 19,525-26 (1998).

In an answer submitted April 30, 1998, Ms. Boschuk denied that she willfully violated NRC requirements relative to the staff's allegations and requested a hearing to contest the staff's April 1998 order. After being appointed to conduct this adjudicatory proceeding, see 63 id. 28,526 (1998), in a May 21, 1998 initial prehearing order this Board requested a joint report from Ms. Boschuk and the staff that, among other things, set forth the status of any settlement discussions between them. On June 15, 1998, and again on July 1, 1998, the participants provided joint reports that stated they were engaged in settlement negotiations and requested the proceeding be held in abeyance pending the outcome of those discussions. Thereafter, the participants filed the joint settlement motion now before us.

Under the terms of the July 30, 1998 settlement agreement, the staff agrees to modify the April 1998 enforcement order to reduce from five to two and one-half years (specifically, until September 27, 2000) (1) the term of the prohibition on Ms. Boschuk having any involvement in NRC-licensed activities; and (2) the period during which Ms. Boschuk is required to provide a copy of the agency's enforcement order to employers or business partners. The order's requirement for post-prohibition notification of the


Regional Administrator is not retained under the settlement agreement. The staff also agrees not to take any further enforcement action against Ms. Boschuk based on the facts outlined in the April 1998 order. In turn, Ms. Boschuk agrees to withdraw her hearing request and waives any right to appeal or contest the settlement agreement once it is approved by this Board. Both participants agree there has not been any adjudication of wrongdoing by Ms. Boschuk and the settlement agreement is not to be construed as an admission of wrongdoing by Ms. Boschuk or a concession of no wrongdoing or lack of agency jurisdiction by the staff.


Pursuant to subsections (b) and (o) of section 161 of the Atomic Energy Act of 1954, 42 U.S.C. § 2201(b), (o), and 10 C.F.R. § 2.203, we have reviewed the participants' joint settlement agreement to determine whether approval of the agreement and termination of this proceeding is in the public interest. Based on that review, and according due weight to the position of the staff, we have concluded both actions are consonant with the public interest. We thus grant the participants' joint motion to approve the settlement agreement and dismiss this proceeding.


For the foregoing reasons, it is this fifth day of August 1998, ORDERED, that:

1. The July 31, 1998 joint motion of Lourdes T. Boschuk and the staff is granted and we approve their July 30, 1998 "Settlement Agreement," which is attached to and incorporated by reference in this memorandum and order.
2. This proceeding is dismissed.

THE ATOMIC SAFETY
AND LICENSING BOARD³


G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE


Frederick J. Shon
ADMINISTRATIVE JUDGE


Thomas D. Murphy
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 5, 1998

³ Copies of this memorandum and order were sent this date to counsel for petitioner Lourdes T. Boschuk by Internet e-mail transmission; and to counsel for the NRC staff by e-mail through the agency's wide area network system.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
LOURDES T. BOSCHUK) Docket No. IA 98-20
)
(Order Prohibiting Involvement in)
NRC-Licensed Activities))

SETTLEMENT AGREEMENT

On April 10, 1998, the Nuclear Regulatory Commission ("NRC") issued an "Order Prohibiting Involvement in NRC-Licensed Activities" ("Order") captioned "IA 98-20" to Lourdes T. Boschuk (hereafter "Mrs. Boschuk"). See 63 Fed. Reg. 19,525 (April 20, 1998). On April 30, 1998, Mrs. Boschuk answered the Order, denying that she engaged in a pattern and practice of willfully violating NRC requirements and requesting a hearing.

The parties to the above-captioned proceeding, the NRC staff ("Staff") and Mrs. Boschuk have engaged in negotiation and agree that it is in the public interest to terminate this proceeding without further litigation and without reaching the merits of the Order, subject to the approval of the Atomic Safety and Licensing Board.

NOW THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Mrs. Boschuk agrees to withdraw her request for a hearing, dated April 30, 1998, and otherwise waive her right to a hearing in connection with this matter, and waive any right to contest or otherwise appeal this Settlement Agreement once approved by the Atomic Safety and Licensing Board. Such withdrawal and waiver will become effective only upon approval of this Settlement Agreement by the Atomic Safety and Licensing Board.

2. Mrs. Boschuk agrees to refrain from engaging in NRC-licensed activities until September 27, 2000. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 C.F.R. § 150.20.

3. Mrs. Boschuk agrees, that until September 27, 2000, she will

a. immediately provide a copy of this Settlement Agreement to any employer or other person who directs or requests Mrs. Boschuk to perform duties involved in NRC-licensed activities as described in paragraph 2, above. The purpose of this

requirement is to ensure that the employer or business partner is aware of the prohibition on Mrs. Boschuk from engaging in NRC-licensed activities; and

b. provide a copy of this Settlement Agreement to any NRC licensee prior to acquisition of an ownership or partnership interest in such licensee. The purpose of this requirement is to ensure that the NRC licensee is aware of the prohibition on Mrs. Boschuk from engaging in NRC-licensed activities. This requirement does not apply to the purchase of stock in a licensee whose shares are publicly traded.

4. In consideration of Mrs. Boschuk's agreement in paragraphs 1-3 of this Settlement Agreement and Mrs. Boschuk's statement in paragraph IV.1 of her April 30, 1998 answer (sworn to in an affidavit appended thereto) that she has complied with the September 27, 1995 Suspension Order, the Staff hereby modifies paragraphs III, IV.1, IV.2, and IV.3 of the Order consistent with paragraphs 2-3 above, however, all other provisions of the Order shall remain in effect. The Staff further agrees not to take any further enforcement action against Mrs. Boschuk based on the facts outlined in the Order. In the event that Mrs. Boschuk fails to comply with the conditions set forth in paragraphs 1-3 of this Settlement Agreement, the Staff expressly reserves the right to take whatever action necessary and appropriate to enforce the terms of this Settlement Agreement.

5. The Staff and Mrs. Boschuk understand and agree that this Settlement is limited to the issues in and the parties to the above-captioned proceeding.

6. Mrs. Boschuk and the Staff (hereafter collectively referred to as "the parties") agree to file a joint motion requesting the Board to approve this Settlement Agreement and terminate the proceeding, pursuant to the Commission's regulations in 10 C.F.R. § 2.203. If this Settlement Agreement is not approved or is changed in any substantive manner by the Board, this Settlement Agreement may be voided by any party by giving written notice to the parties and the Board. The parties agree that under these circumstances and upon request they will negotiate in good faith to resolve differences.

7. The Staff and Mrs. Boschuk agree and acknowledge that there has not been any adjudication of any wrongdoing by Mrs. Boschuk and that this Settlement Agreement is the result of a compromise and shall not for any purpose be construed: (a) as an admission by Mrs. Boschuk of any wrongdoing; or (b) as a concession by the NRC Staff that no violation or wrongdoing occurred or that the NRC lacks jurisdiction to issue orders to Mrs. Boschuk.

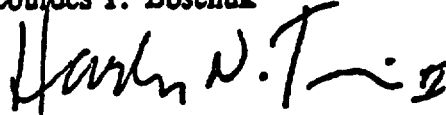
IN WITNESS WHEREOF, Mrs. Boschuk and the Staff have caused this Settlement Agreement to be executed by the parties or their duly authorized representatives on this ~~30th~~ day of July, 1998.



Mitzi A. Young
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Lourdes T. Boschuk



Harley N. Trice, II
Counsel for Lourdes T. Boschuk
Reed Smith Shaw & McClay LLP
435 Sixth Avenue
Pittsburgh, PA 15219-1886

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

LOURDES T. BOSCHUK

(Order Prohibiting Involvement in
NRC-Licensed Activities)

Docket No.(s) IA 98-20

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-98-16) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Frederick J. Shon
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mitzi A. Young, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Harley N. Trice II, Esq.
Reed Smith Shaw & McClay LLP
435 Sixth Avenue
Pittsburgh, PA 15219

Dated at Rockville, Md. this
5 day of August 1998

Adria T. Byrdson
Office of the Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 24, 1998

IA 98-024

Leland H. Brooks
[HOME ADDRESS DELETED FROM
COPIES PURSUANT TO 10 CFR 2.790]

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) (NRC INVESTIGATION REPORT 4-97-069)**

Dear Mr. Brooks:

On April 27, 1998, the NRC issued a letter to you describing an apparent violation of NRC requirements and informing you that the NRC was considering escalated enforcement action against you. The letter provided you a choice of requesting a predecisional enforcement conference or submitting a written response. Although you telephoned the NRC regional office and stated that you didn't recall ever working at the Diablo Canyon Nuclear Power Plant, you have not submitted a written response and have not provided any evidence to support your claim.

In our letter, we informed you that in the absence of a response we would proceed with enforcement action. Accordingly, the enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you because you deliberately falsified information which you provided on an application to obtain unescorted access to Pacific Gas & Electric Company's Diablo Canyon Nuclear Power Plant. The Order prohibits your involvement in NRC-licensed activities for a period of five years and requires you to inform the NRC if you are employed in NRC-licensed activities following this five-year period.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order may be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Questions concerning the Order should be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, and the enclosure will be placed in the NRC Public Document Room.

Sincerely,

William D. Travers
Deputy Executive Director
for Regulatory Effectiveness

Leland H. Brooks

-2-

Enclosure: As Stated

cc w/Enclosure:

Gregory M. Rueger, Senior Vice President
and General Manager
Nuclear Power Generation Bus. Unit
Pacific Gas and Electric Company
Nuclear Power Generation, B14A
77 Beale Street, Room 1451
P.O. Box 770000
San Francisco, California 94177

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Leland H. Brooks

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IA 98-024

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Leland H. Brooks was an employee of Westinghouse a contractor to Pacific Gas & Electric Company (PG&E) at the Diablo Canyon Nuclear Power Plant (Diablo Canyon). PG&E holds NRC license Nos. DPR-80 and DPR-82, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of Units 1 and 2 of the Diablo Canyon facility in accordance with the conditions specified therein.

II

On April 16, 1997, Mr. Brooks, a millwright, was granted temporary unescorted access to Diablo Canyon as an employee of Westinghouse. PG&E terminated Mr. Brooks access to Diablo Canyon on May 21, 1997, upon completion of the work Mr. Brooks was hired to perform. PG&E's decision to grant Mr. Brooks unescorted access was based on the information Mr. Brooks provided in a signed Personnel Access Questionnaire dated April 7, 1997, including information Mr. Brooks provided about his arrest record. In addition to requesting information about any arrests, this questionnaire clearly stated, "For all arrests and/or convictions that occurred in the last five years, a copy of your court orders must be provided with this application." Mr. Brooks wrote "None" next to this statement. On July 22, 1997, approximately two months after Mr. Brooks' access to Diablo Canyon had been terminated, PG&E received information from the Federal Bureau of Investigation (FBI) which indicated that Mr. Brooks had

failed to inform PG&E of several arrests and convictions, including a 1995 felony charge which was still pending. PG&E conducted an investigation and determined that Mr. Brooks knowingly withheld and/or falsified information on the Personnel Access Questionnaire. On August 6, 1997, PG&E issued Mr. Brooks a letter informing Mr. Brooks of this conclusion and denying Mr. Brooks future access to Diablo Canyon.

The deliberately false information that Mr. Brooks provided to the licensee, as well as the failure to provide copies of the required court records, were violations of 10 CFR 50.5, "Deliberate Misconduct." Specifically, Section 50.5(a)(2) provides, in part, that an employee of a contractor to a licensee may not deliberately submit to a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The false and incomplete information that Mr. Brooks submitted was material because PG&E is required to consider criminal history in making a determination as to whether to grant unescorted access in accordance with 10 CFR 73.56.

On April 27, 1998, the NRC issued a letter to Mr. Brooks, informing Mr. Brooks that the NRC was considering escalated enforcement action against him and providing Mr. Brooks a choice of requesting a predecisional enforcement conference or submitting a written response. Although Mr. Brooks telephoned the NRC regional office and stated that he didn't recall ever working at the Diablo Canyon nuclear power plant, he has not submitted a written response or requested a predecisional enforcement conference, and he has not provided any evidence to support his claim. The NRC's letter to Mr. Brooks informed him that in the absence of a response, we would proceed with enforcement action.

III

Based on the above, the NRC has concluded that Mr. Brooks engaged in deliberate misconduct by deliberately omitting criminal history information when completing a Personnel Access Questionnaire to gain unescorted access to the Diablo Canyon nuclear power plants. The NRC must be able to rely on employees of licensees and their contractors to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Brooks's action in deliberately providing false information to the licensee raises serious doubt about his trustworthiness and reliability and particularly whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Brooks were permitted to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Brooks be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Brooks is required to notify the NRC of his first employment in NRC-licensed activities for the five year period after the above prohibition period. Furthermore, pursuant to 10 CFR 2.202, based on the significance of Mr. Brook's conduct described above and the fact that he could seek and obtain employment and unescorted access at other nuclear facilities, and engage in licensed activities before his criminal history became known to the licensee, I find that the public health, safety and interest require that this Order be effective immediately.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Leland H. Brooks is prohibited for five years from the date of this order from engaging in NRC licensed activities. NRC-licensed activities are those that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Leland H. Brooks is currently involved with another employer in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.
3. For the five-year period after the above prohibition period has expired, Mr. Brooks shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, within 20 days of the first time he accepts an offer for employment in NRC-licensed activities, as defined in Paragraph IV.1 above. In the notification, he will include a statement of his commitment to comply with regulatory requirements and address why the NRC should have confidence that he will comply with regulatory requirements, and the name, address and telephone number of his employer

or entity where he will be involved in licensed activities.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Brooks of good cause.

V

In accordance with 10 CFR 2.202, Mr. Brooks must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Brooks, or any other such person adversely affected, relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN.: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Brooks if the answer or hearing request is by a person other than Mr. Brooks. If a person other than Mr. Brooks requests a hearing, that person shall set forth with particularity the manner in which his or her

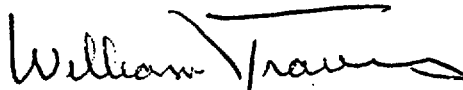
interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Brooks or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i) Mr. Brooks may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order, on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. **AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.**

FOR THE NUCLEAR REGULATORY COMMISSION



William D. Travers
Deputy Executive Director
for Regulatory Effectiveness

Dated at Rockville, Maryland
this 24th day of July 1988



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 29, 1999

IA 98-067

Ms. Sheila N. Burns
[Home address deleted from
copies pursuant to 10 CFR 2.790]

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES,
EFFECTIVE IMMEDIATELY
(NRC Inspection Report 030-33943/98-02 and Investigation Report 4-1998-053)**

Dear Ms. Burns:

On January 25, 1999, the NRC conducted a predecisional enforcement conference with you to discuss several apparent, deliberate violations of NRC requirements related to a November 7, 1998 radiography incident. Based on the information developed by the NRC during its inspection and investigation, and after consideration of the information that you provided during the conference, the NRC has determined that you engaged in deliberate misconduct prohibited by 10 CFR 30.10(a)(i) that caused your employer, International Radiography and Inspection Services, Inc. (IRIS) to be in violation of several NRC requirements.

Your actions on November 7, 1998 constituted a total disregard for radiation safety. Your participation in a decision to continue conducting radiography without a radiation survey instrument after you had indications of a potentially significant radiation exposure, and your decision to provide your employer with false information about the incident are particularly egregious. As a result, we have concluded that you should be prohibited from further involvement in NRC-licensed activities.

The enclosed Order: 1) prohibits your involvement in NRC-licensed activities for a period of 3 years, effective on the date of issuance of the Order; 2) requires you to inform any current employer who holds any NRC or NRC Agreement State license of the restrictions contained in this Order, and to notify the NRC of such employment; and 3) requires you to notify the NRC if you elect to return to employment in NRC-licensed activities after the 3-year prohibition expires. The prohibitions contained in this Order include activities conducted by a licensee of an NRC Agreement State operating in NRC jurisdiction under a general license pursuant to 10 CFR 150.20 (for example, a licensee of the state of Texas performing radiography in Oklahoma, a non-Agreement State regulated by the NRC).

Please note that you are required to respond to this Order, whether or not you elect to contest its issuance.

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to a civil monetary penalty. Questions concerning this Order should be addressed to J. Lieberman, Director, Office of Enforcement at (301) 415-2741.

Sheila N. Burns

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and enclosed Order will be placed in the NRC Public Document Room (PDR).

Sincerely,



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Docket No. 030-33943
License No. 35-30246-01

Enclosure: As Stated

cc:
Mr. Kevin Wieland, Vice President
International Radiography and
Inspection Services, Inc.
1115 W. 41st St.
Tulsa, Oklahoma 74107

American Society of Nondestructive Testing, Inc.
ATTN: Technical Services Manager
1711 Arlingate Lane
P.O. Box 28518
Columbus, Ohio 43228-0518

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Sheila N. Burns

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IA 98-067

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Sheila N. Burns was employed as a radiographer's assistant by International Radiography and Inspection Services, Inc. (IRIS or Licensee), Tulsa, Oklahoma. IRIS holds License No. 35-30246-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34. The license authorizes IRIS to possess and utilize sealed radiation sources in the performance of industrial radiography in accordance with the conditions specified in the license.

II

On November 7, 1998, Ms. Burns and another IRIS employee were performing radiography at Sagebrush Pipeline Equipment Company in Sapulpa, Oklahoma, using a radiographic exposure device (camera) containing approximately 87 curies of iridium-192. Ms. Burns was the radiographer's assistant on this job; the other IRIS employee was a radiographer. In accordance with 10 CFR 34.46, the radiographer's assistant was required to be under the personal supervision of the radiographer when using the radiographic exposure device or performing radiation surveys.

On November 9, 1998, the radiation safety officer for IRIS notified the NRC Operations Center in Rockville, Maryland, of an incident that occurred on November 7, 1998, involving Ms. Burns

and the radiographer. The incident resulted in a radiation exposure to Ms. Burns in excess of the annual limit in 10 CFR 20.1201.

The NRC conducted an inspection and investigation to review the circumstances surrounding this incident, and identified numerous apparent violations of radiation safety requirements associated with this incident, many of which were committed deliberately. The results of the NRC investigation were described in an investigation report issued on January 5, 1999. The results of the inspection were described in an inspection report issued on March 3, 1999. On January 25, February 4, and March 18, 1999, respectively, the NRC conducted separate predecisional enforcement conferences with Ms. Burns, the radiographer, and IRIS representatives. The conferences were conducted to discuss the apparent violations and to assist the NRC in reaching enforcement decisions in this matter.

With respect to Ms. Burns, the NRC has determined that she engaged in the following acts of deliberate misconduct prohibited by 10 CFR 30.10(a)(i) that caused IRIS to be in willful violation of regulatory requirements by: (1) knowingly conducting radiography at a site at which there was no radiation survey instrument, contrary to the requirements of 10 CFR 34.25(a); (2) knowingly conducting radiography without performing radiation surveys each time the radiographic source was returned to its shielded position following an exposure, contrary to the requirements of 10 CFR 34.49(b); and (3) knowingly conducting radiography without wearing all required personal radiation monitoring equipment, contrary to the requirements of 10 CFR 34.47(a). In addition, Ms. Burns knowingly provided false and misleading information to IRIS's radiation safety officer following the incident, contrary to the requirements of 10 CFR 30.10(a)(2). With regard to the latter violation, Ms. Burns knowingly provided IRIS officials with false information which was intended to cause them to believe that the

radiographer was in the restroom at the time of the exposure incident, that she and the radiographer had followed radiation safety requirements regarding the use of radiation survey instruments and personal dosimetry, that she had inadvertently used a faulty alarm ratemeter that night, and that she and the radiographer had halted radiography work following her pocket dosimeter going off-scale.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Ms. Burns' deliberate misconduct, which caused IRIS to violate the Commission's regulations and resulted in a radiation exposure in excess of the annual limit in 10 CFR 20.1201, and her misrepresentations to IRIS officials, have raised serious doubt as to whether she can be relied upon to comply with NRC requirements, and to provide complete and accurate information to the NRC and its licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities will be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Sheila N. Burns were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Sheila N. Burns be prohibited from any involvement in NRC-licensed activities for a period of 3 years from the date of this Order. Additionally, Sheila N. Burns is required to notify the NRC of her first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Sheila N. Burns's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Sheila N. Burns is prohibited for 3 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Sheila N. Burns is currently involved with another licensee in NRC-licensed activities, she must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.
3. For a period of 3 years after the 3-year period of prohibition has expired, Sheila N. Burns shall, within 20 days of her acceptance of each employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in NRC-licensed activities. In the first notification Ms. Burns shall include a statement of her commitment to compliance with regulatory requirements and the basis why the

Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Sheila N. Burns of good cause.

V

In accordance with 10 CFR 2.202, Ms. Burns must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Burns or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Ms. Burns if the answer or hearing request is by a person other than Ms. Burns. If a person other than

Ms. Burns requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Burns or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ms. Burns may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. **AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.**

FOR THE NUCLEAR REGULATORY COMMISSION



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

April 29, 1999

IA 99-002

Mr. James S. Dawson
[Home address deleted from
copies pursuant to 10 CFR 2.790]

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES,
EFFECTIVE IMMEDIATELY
(NRC Inspection Report 030-33943/98-02 and Investigation Report 4-1998-053)**

Dear Mr. Dawson:

On February 4, 1999, the NRC conducted a predecisional enforcement conference with you to discuss several apparent, deliberate violations of NRC requirements related to a November 7, 1998 radiography incident. Based on the information developed by the NRC during its inspection and investigation, and after consideration of the information that you provided during the conference, the NRC has determined that you engaged in deliberate misconduct prohibited by 10 CFR 30.10(a)(i) that caused your employer, International Radiography and Inspection Services, Inc. (IRIS) to be in violation of several NRC requirements.

Your actions on November 7, 1998 constituted a total disregard for radiation safety. Your decisions to continue conducting radiography without a radiation survey instrument after you had indications of a potentially significant radiation exposure to your radiographer's assistant, and your decision to provide your employer with false information about the incident are particularly egregious. As a result, we have concluded that you should be prohibited from further involvement in NRC-licensed activities.

The enclosed Order: 1) prohibits your involvement in NRC-licensed activities for a period of 5 years, effective on the date of issuance of the Order; 2) requires you to inform any current employer who holds any NRC or NRC Agreement State license of the restrictions contained in this Order, and to notify the NRC of such employment; and 3) requires you to notify the NRC if you elect to return to employment in NRC-licensed activities after the 5-year prohibition expires. The prohibitions contained in this Order include activities conducted by a licensee of an NRC Agreement State operating in NRC jurisdiction under a general license pursuant to 10 CFR 150.20 (for example, a licensee of the state of Texas performing radiography in Oklahoma, a non-Agreement State regulated by the NRC).

Please note that you are required to respond to this Order, whether or not you elect to contest its issuance.

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also


James S. Dawson

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subject the person to a civil monetary penalty. Questions concerning this Order should be addressed to J. Lieberman, Director, Office of Enforcement at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and enclosed Order will be placed in the NRC Public Document Room (PDR).

Sincerely,



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Docket No. 030-33943
License No. 35-30246-01

Enclosure: As Stated

cc:

Mr. Kevin Wieland, Vice President
International Radiography and
Inspection Services, Inc.
1115 W. 41st St.
Tulsa, Oklahoma 74107

American Society of Nondestructive Testing, Inc.
ATTN: Technical Services Manager
1711 Arlingate Lane
P.O. Box 28518
Columbus, Ohio 43228-0518

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
James S. Dawson

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IA 99-002

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

James S. Dawson was employed as a radiographer by International Radiography and Inspection Services, Inc. (IRIS or Licensee), Tulsa, Oklahoma. IRIS holds License No. 35-30246-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34. The license authorizes IRIS to possess and utilize sealed radiation sources in the performance of industrial radiography in accordance with the conditions specified in the license.

II

On November 7, 1998, Mr. Dawson and another IRIS employee were performing radiography at Sagebrush Pipeline Equipment Company in Sapulpa, Oklahoma, using a radiographic exposure device (camera) containing approximately 87 curies of iridium-192. Mr. Dawson was the radiographer on this job; the other IRIS employee was a radiographer's assistant. In accordance with 10 CFR 34.46, the radiographer's assistant was required to be under the personal supervision of Mr. Dawson when using the radiographic exposure device or performing radiation surveys. Thus, Mr. Dawson was responsible for assuring that certain NRC-licensed activities carried out by the radiographer's assistant were being performed appropriately and in compliance with NRC requirements.

On November 9, 1998, the radiation safety officer for IRIS notified the NRC Operations Center in Rockville, Maryland, of an incident that occurred on November 7, 1998 involving Mr. Dawson and the radiographer's assistant. The incident resulted in a radiation exposure to the radiographer's assistant in excess of the annual limit in 10 CFR 20.1201.

The NRC conducted an inspection and investigation to review the circumstances surrounding this incident, and identified numerous apparent violations of radiation safety requirements associated with this incident, many of which were committed deliberately. The results of the NRC investigation were described in an investigation report issued on January 5, 1999. The results of the inspection were described in an inspection report issued on March 3, 1999. On January 25, February 4, and March 18, 1999, respectively, the NRC conducted separate predecisional enforcement conferences with the radiographer's assistant, Mr. Dawson, and IRIS representatives. The conferences were conducted to discuss the apparent violations and to assist the NRC in reaching enforcement decisions in this matter.

With respect to Mr. Dawson, the NRC has determined that he engaged in the following acts of deliberate misconduct prohibited by 10 CFR 30.10(a)(i) that caused IRIS to be in willful violation of regulatory requirements by: (1) knowingly conducting radiography at a site at which there was no radiation survey instrument, contrary to the requirements of 10 CFR 34.25(a); (2) knowingly conducting radiography without performing radiation surveys each time the radiographic source was returned to its shielded position following an exposure, contrary to the requirements of 10 CFR 34.49(b); (3) knowingly conducting radiography without wearing all of the required personal radiation monitoring equipment, contrary to the requirements of 10 CFR 34.47(a); (4) knowingly permitting the radiographer's assistant to resume work

associated with licensed material after the radiographer's assistant's pocket dosimeter went off-scale and before a determination of the radiographer's assistant's radiation exposure had been made, contrary to the requirements of 10 CFR 34.47(d); and (5) knowingly failing to immediately contact the IRIS radiation safety officer after the radiographer's assistant's pocket dosimeter went off-scale, contrary to the requirements of IRIS's operating and emergency procedures (i.e., Item 3.1.2.1 IRIS' Radiation Safety Manual). In addition, Mr. Dawson knowingly provided false and misleading information to IRIS's radiation safety officer following the incident, contrary to the requirements of 10 CFR 30.10(a)(2). With regard to the latter violation, Mr. Dawson knowingly provided IRIS officials with false information which was intended to cause them to believe that Mr. Dawson was in the restroom at the time of the exposure incident, that he and the radiographer's assistant had followed radiation safety requirements regarding the use of radiation survey instruments and personal dosimetry, and that he had halted radiography work following the radiographer's assistant's pocket dosimeter going off-scale.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Dawson's deliberate misconduct, which caused IRIS to violate the Commission's regulations and resulted in a radiation exposure to the radiographer's assistant in excess of the annual limit in 10 CFR 20.1201, and his misrepresentations to IRIS officials, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements, and to provide complete and accurate information to the NRC and its licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities will be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if James S. Dawson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that James S. Dawson be prohibited from any involvement in NRC-licensed activities for a period of 5 years from the date of this Order. Additionally, James S. Dawson is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of James S. Dawson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. James S. Dawson is prohibited for 5 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If James S. Dawson is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 5 years after the 5-year period of prohibition has expired, James S. Dawson shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the first notification Mr. Dawson shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by James S. Dawson of good cause.

V

In accordance with 10 CFR 2.202, Mr. Dawson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be

given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Dawson or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Dawson if the answer or hearing request is by a person other than Mr. Dawson. If a person other than Mr. Dawson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Dawson or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Dawson may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Dated this 29th day of April 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 31, 1997

IA 97-064

Magdy Elamir, M.D.
President and Owner
Newark Medical Associates, P.A.
810 Broad Street
Newark, New Jersey 07102

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY), PENDING FURTHER ORDER

Dear Dr. Elamir:

The enclosed Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately), is being issued because of your deliberate violations of NRC requirements. The violations were identified during an NRC inspection conducted on January 29, 1997, at your Newark, New Jersey facility, as well as a subsequent investigation by the NRC Office of Investigations. The NRC staff's review of the results of the OI investigation is continuing. The evidence obtained during the inspection and investigation revealed that you engaged in deliberate misconduct as defined in 10 CFR 30.10. Specifically, you submitted a letter, dated February 22, 1996, to the NRC transmitting your application for a license to possess and use byproduct material, and that application was submitted without the knowledge and consent of the individual listed on the application as the authorized user and Radiation Safety Officer (RSO). Also, that individual had no affiliation or association with your company, and has no recollection of ever meeting your company representatives. As a result, NRC License No. 29-30282-01 was issued to you on September 25, 1996, based on information submitted by you that was not complete and accurate in all material respects. Further, after the license was issued, you used licensed material on numerous occasions without having an authorized user or RSO, and without informing the NRC that the individual named on your license as the authorized user and RSO was not fulfilling those duties.

Given your engagement in deliberate violations of NRC requirements, the NRC is issuing to you an Order Prohibiting Involvement In NRC Licensed Activities (Effective Immediately) Pending Further Order. Among other things, the Order prohibits you from supervising licensed activities, including (but not limited to) hiring, directing, or managing individuals engaged in licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

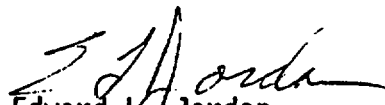
In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room.

Magdy Elamir, M.D.

- 2 -

Questions concerning these actions should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

Sincerely,


Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness

Docket No. 030-34086
License No. 29-30282-01

Enclosure:
Order Prohibiting Involvement in
NRC Licensed Activities (Effective Immediately)

cc w/encl:
State of New Jersey

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MAGDY ELAMIR, M.D.
Newark, New Jersey

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IA 97-064

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) PENDING FURTHER ORDER

I

Magdy Elamir, M.D., (Dr. Elamir), is the Owner/President of Newark Medical Associates, P.A. (licensee), an NRC licensee who is the holder of Byproduct Nuclear Material License No. 29-30282-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of any radiopharmaceutical identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was originally issued on September 25, 1996, and is due to expire on September 30, 2001.

II

On January 29, 1997, the NRC conducted an inspection at the licensee's facility in Newark, New Jersey. During the inspection, several apparent violations of NRC requirements were identified. One of the violations involved the continued use of radioactive material by the licensee despite the fact that the only authorized user listed on the license (who was also listed as the Radiation Safety Officer (RSO)), had not ever performed any authorized user or RSO duties and had not ever been affiliated with the company. Specifically, Gerard W. Moskowitz, M.D. (Dr. Moskowitz), was listed on the

application as the RSO and authorized user without his knowledge.

Dr. Moskowitz did not become aware that he was listed on the application and the license until notified by the NRC on February 6, 1997, more than four months after the license was originally issued.

Subsequent to the inspection, the NRC verified, based on an investigation by the NRC Office of Investigations (OI), that the licensee's letter, dated February 22, 1996, signed by Dr. Elamir, transmitting the license application (NRC Form 313), dated February 2, 1996, was inaccurate in that it listed Dr. Moskowitz as the authorized user and Radiation Safety Officer without Dr. Moskowitz's consent or knowledge and without Dr. Moskowitz ever having been affiliated or associated with the licensee. Further, Dr. Moskowitz did not ever perform the role of RSO at the licensee's facility. As such, the licensee's application for a material license to possess and use byproduct material was provided with information that was not complete and accurate in all material respects. These inaccurate statements in the licensee's application, signed by Dr. Elamir, formed, in part, the basis for the issuance of the license to Newark Medical Associates on September 25, 1996. Further, the licensee continued to conduct NRC-licensed activities even though Dr. Elamir knew that the licensee did not have an RSO.

III

Although the NRC staff's review of the results of the OI investigation is ongoing, the evidence that NRC has obtained indicates that Dr. Elamir's actions in causing violations of NRC requirements were deliberate. The NRC

must be able to rely on the licensee and its employees to comply with NRC requirements. Condition No. 13 of the license required that each use of licensed material be done by, or under the supervision of Dr. Moskowitz as the authorized user named therein. NRC requires that the RSO named on the license implement a radiation safety program pursuant to 10 CFR 35.21. NRC also requires that all communications between the licensee and the NRC be complete and accurate in all material respects, pursuant to 10 CFR 30.9. Pursuant to 10 CFR 30.10, deliberate misconduct on the part of a licensee or its employee or contractor is prohibited. The term "deliberate misconduct" includes an intentional act that the person knows would violate a Commission requirement. The evidence to date demonstrates that Dr. Elamir, acting in violation of 10 CFR 30.10, deliberately violated NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. Elamir were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Elamir be prohibited from any involvement in NRC-licensed activities pending further order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Dr. Elamir's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, Part 35, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY:

1. Pending further order, Dr. Elamir is prohibited from engaging in NRC-licensed activities. This prohibition applies to Dr. Elamir as an employee, contractor, consultant, or other agent of a license and includes, but is not limited to: (1) any use of NRC-licensed materials; (2) supervising licensed activities, including (but not limited to) hiring of individuals engaged in licensed activities or directing or managing individuals engaged in licensed activities; (3) radiation safety activities including (but not limited to) functions of the Radiation Safety Officer; and (4) development of license applications, procedures, and policies to meet license requirements, providing training to meet license requirements, and providing professional services to meet license requirements. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. If Dr. Elamir is currently involved in NRC-licensed activities other than at Newark Medical Associates, P.A., he must, as of the effective date of this Order: (1) immediately cease such activities; (2) inform the NRC of the name, address and telephone number of the NRC-licensed entity or entities where the activities are being conducted; and (3) provide a copy of this order to all such NRC-licensed entities.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

V

In accordance with 10 CFR 2.202, Dr. Elamir must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Elamir or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission. Attn: Chief, Docketing

and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Elamir if the answer or hearing request is by a person other than Dr. Elamir. If a person other than Dr. Elamir requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).


If a hearing is requested by Dr. Elamir or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Dr. Elamir may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order

or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness

Dated at Rockville, Maryland
this 31st day of July 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 15, 1997

IA 97-070

Magdy Elamir, M.D.
President and Owner
Newark Medical Associates, P.A.
810 Broad Street
Newark, New Jersey 07102

SUBJECT: ORDER SUPERSEDING ORDER PROHIBITING INVOLVEMENT IN NRC LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)

Dear Dr. Elamir:

On July 31, 1997, the NRC issued to you an Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) Pending Further Order (62 Fed. Reg. 43360). As discussed in that Order, the NRC staff's review of the results of an investigation conducted by the NRC's Office of Investigations (OI) was ongoing. The NRC staff has now completed its review of the results of the OI investigation.

The enclosed Order Superseding Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) prohibits your involvement in NRC-licensed activities for a period of five years from July 31, 1997, because of your deliberate violations of NRC requirements, as more specifically set forth in Section III of this Order.

The Order prohibits you from, among other things, supervising licensed activities. This prohibition includes (but is not limited to) hiring, directing, or managing individuals engaged in licensed activities.

In accordance with the provisions in Section VI of the Order, you may request a hearing on the Order and you may move the presiding officer to set aside the immediate effectiveness of the Order. Please refer to Section VI for further information. The Order issued to you on July 31, 1997, is superseded in its entirety. Thus, any challenge, either to immediate effectiveness or by way of an answer setting forth why the Order should not be upheld, should be to the enclosed Order rather than to the Order of July 31, 1997.

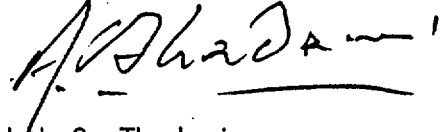
Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room.

Magdy Elamir, M.D.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Thadani', with a horizontal line underneath the name.

Ashok C. Thadani
Deputy Executive Director for
Regulatory Effectiveness

Docket No. 030-34086
License No. 29-30282-01

Enclosure:
Order Superseding Order Prohibiting Involvement in
NRC Licensed Activities (Effective Immediately)

cc w/encl:
State of New Jersey

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MAGDY ELAMIR, M.D.
Newark, New Jersey

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IA 97-070

ORDER SUPERSEDING ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES (EFFECTIVE IMMEDIATELY)

I

Magdy Elamir, M.D., (Dr. Elamir), is the Owner/President of Newark Medical Associates, P.A. (licensee). The licensee holds Byproduct Nuclear Material License No. 29-30282-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of any radiopharmaceutical identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was originally issued on September 25, 1996, and is due to expire on September 30, 2001.

II

During a new license inspection conducted on January 29, 1997, at the licensee's facility, several apparent violations of NRC requirements were identified. Subsequent to the inspection, the NRC initiated an investigation which led the NRC to issue to Dr. Elamir, on July 31, 1997, an Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) Pending Further Order (62 Fed. Reg. 43360). That Order was issued pending completion of the NRC staff review of the results of the investigation, which was conducted by the NRC's Office of Investigations (OI). The NRC staff's review of the results of the OI investigation is now complete.

The OI investigation focused, in part, on Dr. Elamir's actions in causing the licensee to be in violation of NRC requirements. The NRC learned during the investigation that Dr. Elamir transmitted an inaccurate license application (NRC Form 313, dated February 21, 1996) to the NRC. The license application named Newark Medical Associates as the prospective licensee. The license application was inaccurate in that it named Gerard W. Moskowitz, M.D., (Dr. Moskowitz) as the only authorized user and Radiation Safety Officer (RSO) without Dr. Moskowitz's consent or knowledge, and without Dr. Moskowitz's ever having been affiliated or associated with the licensee. Dr. Moskowitz did not ever perform the role of authorized user or RSO at the licensee's facility, and did not become aware that he was listed on the application and the license until notified by the NRC on February 6, 1997, more than four months after the license was originally issued. These inaccurate statements in the license application submitted by Dr. Elamir, formed, in part, the basis for the issuance of the license to Newark Medical Associates on September 25, 1996.

On October 17, 1996, Dr. Elamir notified the NRC by letter that Newark Medical Associates was initiating activities authorized by the license; and during the period from November 1996 through February 6, 1997, Dr. Elamir, in his capacity as president and owner of Newark Medical Associates, caused and permitted the licensee to conduct NRC-licensed activities even though he knew that the licensee did not employ the authorized user or the RSO named in the license application and, subsequently, on the NRC license, and that the named individual did not serve in these capacities. Based on the results of the OI

investigation, the NRC has determined that Dr. Elamir's actions constitute violations of the Commission's requirements as follows:

- A. 10 CFR 30.10(a)(2) requires, in part, that any licensee or employee of a licensee may not deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

During a February 6, 1997 telephone conversation between Dr. Elamir and an NRC inspector, Dr. Elamir stated to the NRC inspector that the Newark Medical Associates license was current with respect to the authorized user and RSO even though Dr. Elamir knew that the individual named on the license as the authorized user and RSO was not performing those duties and was not ever affiliated with the licensee in any capacity. This inaccurate statement was material because it had the ability to influence an NRC inspection.

- B. 10 CFR 30.10(a)(1), (c)(1), and (c)(2) require, in part, that any licensee or employee of a licensee not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of: (1) any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission; or (2) any requirement, procedure, instruction, contract, purchase order or policy of a licensee.

1. 10 CFR 35.21 requires that a licensee appoint a Radiation Safety Officer responsible for implementing the radiation safety program; and requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

10 CFR 35.13 requires that a licensee apply for and receive a license amendment before it changes Radiation Safety Officers.

Byproduct Material License No. 29-30282-01, Condition 12, dated September 25, 1996 states that the Radiation Safety Officer for this License is Gerard W. Moskowitz, M.D.

On October 17, 1996, Dr Elamir notified the NRC by letter that Newark Medical Associates was initiating activities authorized by the license; and, during the period from November 1996 through February 6, 1997, Dr. Elamir caused Newark Medical Associates to be in violation of the requirements in Section III.B.1 above by deliberately causing and permitting the licensee to conduct licensed activities even though Dr. Elamir knew that the individual designated as the RSO on the Newark Medical Associates license application and subsequent license did not ever serve as the Radiation Safety Officer under that license and was not ever affiliated with the licensee in any capacity.

2. 10 CFR 35.11(a) and (b) permit an individual to use licensed material for medical use only in accordance with a specific license issued by the Commission or under the supervision of an authorized user as provided in 10 CFR 35.25.

Byproduct Material License No. 29-30282-01, dated September 25, 1996, states in Condition 13 that licensed material is only authorized for use by, or under the supervision of, Gerard W. Moskowitz, M.D.

On October 17, 1996, Dr Elamir notified the NRC by letter that Newark Medical Associates was initiating activities authorized by the license; and during the period from November 1996 through February 6, 1997, Dr. Elamir caused Newark Medical Associates to be in violation of the requirements in Section III.B.2 above by deliberately causing and permitting licensed activities to be conducted by a technologist who did not hold a specific license issued by the NRC and who was not under the supervision of the authorized user specified on the license. Dr. Elamir knew that the individual designated as the only authorized user on the Newark Medical Associates license application and subsequent license did not ever serve as the authorized user under that license and was not ever affiliated with the licensee in any capacity.

Based on the above, the NRC staff has concluded that Dr. Elamir deliberately caused the licensee to be in violation of NRC requirements by causing and permitting the licensee to conduct licensed activities in the absence of the authorized user and RSO named on the license application and on the NRC license. The NRC must be able to rely on the licensee and its employees to comply with NRC requirements. Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public, including patients receiving radiation from byproduct material for medical purposes, will be protected if Dr. Elamir were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Elamir be prohibited from any involvement in NRC-licensed activities for a period of five years. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Dr. Elamir's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, Part 35, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY,

1. The Order of July 31, 1997, is superseded, in its entirety.

2. Dr. Elamir is prohibited from engaging in NRC-licensed activities for a period of five years from July 31, 1997. This prohibition applies to Dr. Elamir as an officer, employee, contractor, consultant, or other agent of a licensee and includes, but is not limited to: (1) any use of NRC-licensed materials; (2) supervising licensed activities, including (but not limited to) hiring of individuals engaged in licensed activities or directing or managing individuals engaged in licensed activities; (3) any involvement in radiation safety activities including (but not limited to) functions of the Radiation Safety Officer; and (4) development of license applications, procedures, and policies to meet license requirements, providing training to meet license requirements, and providing professional services to meet license requirements. NRC-licensed activities are those activities that are conducted pursuant to a specific or general NRC license, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.
3. If, as of July 31, 1997, Dr. Elamir was involved in NRC-licensed activities other than at Newark Medical Associates, P.A., he must: (1) immediately cease such activities; (2) inform the NRC of the name, address and telephone number of the NRC-licensed entity or entities where the activities are being conducted; and (3) provide a copy of this order to all such NRC-licensed entities.

4. For any entities, other than Newark Medical Associates, P.A., where Dr. Elamir was involved in NRC-licensed activities for the period beginning three years prior to the date of this Order, Dr. Elamir must, within 30 days of the date of this Order, inform the NRC of the name, address and telephone number of the NRC-licensed entities where those activities were conducted.

5. For the five years immediately following the five year prohibition in paragraph V.2 above, the first time that Dr. Elamir is employed or involved in NRC-licensed activities following the five year prohibition, he shall notify the Director, Office of Enforcement, at the address in Section VI below, prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. This notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed; and shall include a statement as to why the NRC should have confidence that Dr. Elamir will not, in the future, commit deliberate violations of Commission requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

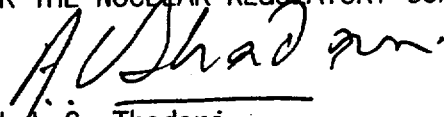
In accordance with 10 CFR 2.202, Dr. Elamir must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Elamir or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemaking and Adjudications, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Elamir if the answer or hearing request is by a person other than Dr. Elamir. If a person other than Dr. Elamir requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Elamir or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Dr. Elamir may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Ashok C. Thadani
Deputy Executive Director for
Regulatory Effectiveness

Dated at Rockville, Maryland
this 15th day of September 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 OCT -8 P2:19

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

OFFICE OF THE
REGULATORY
ADJUDICATOR

SERVED OCT - 8 1998

In the Matter of

MAGDY ELAMIR, M.D.
Newark, New Jersey

Order Superseding Order
Prohibiting Involvement in
NRC-Licensed Activities
(Effective Immediately)

Docket No. IA 97-070

ASLBP No. 98-734-01-EA

October 8, 1998

Travers
Thompson
Nony
Blaha
NRR
OE

***RE-SERVED OCT 15 1998**

MEMORANDUM AND ORDER
(Approving Settlement Agreement and Terminating Proceeding)

On September 15, 1997, the staff of the Nuclear Regulatory Commission (Staff) issued to Dr. Magdy Elamir an "Order Superseding Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately)" (Staff's Order). 62 Fed. Reg. 49,536 (September 22, 1998). The Staff's Order, inter alia, would have prohibited Dr. Elamir's involvement in NRC-licensed activities for a period of five years from July 31, 1997.¹ On October 4, 1997, Dr. Elamir answered the Staff's Order, denying the alleged violations and requesting a hearing.

¹This Order superseded a July 31, 1997 "Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately)." 62 Fed. Reg. 43,360 (August 13, 1997). The prohibition in the Superseding Order continued to run from the date of the earlier Order.

*Corrected page 3 of the Settlement Agreement

This Atomic Safety and Licensing Board was established to preside over this proceeding. 62 Fed. Reg. 54,656 (October 21, 1997). By Memorandum and Order (Request for Hearing and Stay of Proceeding), dated October 23, 1997, we granted Dr. Elamir's hearing request. We also issued a Notice of Hearing. 62 Fed. Reg. 56,207 (October 29, 1997).

At the joint request of the parties, this proceeding has been stayed several times, beginning with our Memorandum and Order (Stay Pending Settlement Negotiations), dated June 23, 1998, to accommodate settlement negotiations between the parties. On October 1, 1998, the parties filed a "Joint Motion for Approval of Settlement Agreement."

Upon consideration of the Joint Motion for Approval of Settlement Agreement, and upon consideration of the Settlement Agreement, a copy of which is attached hereto and incorporated herein by reference, we find, pursuant to 10 C.F.R. § 2.203, that the settlement of this matter as proposed by the parties is in the public interest and should be approved.


Accordingly, without making any findings with respect to matters in dispute among the parties, or any resolution of any disputes arising from the Staff's Order or any challenges thereto, the Settlement Agreement is hereby approved and incorporated into this Order, pursuant to section 81 and subsections (b) and (i) of section 161 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2111,


2201(b) and 2201(i), and is subject to the enforcement provisions of the Commission's regulations and Chapter 18 of the Atomic Energy Act, as amended, 42 U.S.C. § 2271 et seq.

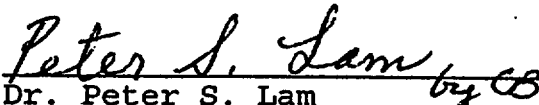
It is therefore ORDERED:

1. The Joint Motion for Approval of Settlement Agreement is hereby granted;
2. The parties' Settlement Agreement, attached to and incorporated by reference into this Order, is hereby approved;
3. This proceeding is hereby terminated.

The Atomic Safety and
Licensing Board


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE


Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE


Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 8, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
MAGDY ELAMIR, M.D.
Newark, New Jersey

:
:
: DOCKET NO. IA-97-070
:

SETTLEMENT AGREEMENT

On September 15, 1997, the Staff issued an "Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)" to Magdy Elamir, M.D. 62 Fed. Reg. 49536 (Sept. 22, 1997). Dr. Elamir answered the superseding order on October 4, 1997 and requested a hearing, resulting in the establishment of an Atomic Safety and Licensing Board. 62 Fed. Reg. 54656 (Oct. 21, 1997). On July 31, 1997, the Staff also issued a Demand for Information, Docket No. 030-34086, EA 97-308, to Newark Medical Associates ("NMA") (licensee under Byproduct Materials License No. 29-30282-01) regarding the same matters at issue in this proceeding.

WHEREAS, the Staff contends that Dr. Elamir caused and permitted NMA to be in violation of NRC requirements and that there was an adequate basis for issuance of the Superseding Order;

WHEREAS, Dr. Elamir denies the Staff's contentions and asserts that there was not an adequate basis for issuance of the Superseding Order;

WHEREAS, Dr. Elamir and NMA have, nevertheless, decided that they do not intend to engage in any NRC-licensed activity until after July 31, 2000, at the earliest;

WHEREAS, the parties have agreed that it is in the public interest to terminate this proceeding, without further litigation;

The parties hereby agree to the following terms and conditions:

1. Dr. Elamir agrees to withdraw his request for a hearing.
2. Dr. Elamir agrees to refrain from engaging in, and is hereby prohibited from engaging in, any NRC-licensed activities for three years from the date of the Staff's original Order, i.e., from July 31, 1997 through July 31, 2000.
3. The prohibition described in Paragraph 2 includes any and all activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 C.F.R. § 150.20.
4. Dr. Elamir further agrees that NMA will relinquish and surrender its license, Byproduct Materials License No. 29-30282-01, to the NRC.

5. In consideration of Dr. Elamir's agreement to the conditions of Paragraphs 1 through 4 above, the Staff agrees that it will take no further enforcement action against Dr. Elamir or NMA based on (i) the facts outlined in the September 15, 1997 Superseding Order; (ii) the 1997 inspections of Newark Medical Associates, or (iii) any other facts disclosed, assertions made, or conclusions reached as a result of the NRC's Office of Investigation's investigation relating to Newark Medical Associates' operations and/or Dr. Elamir's activities. In the event that either Dr. Elamir or NMA fails to comply with any term or condition set forth in Paragraphs 1 through 4 above, the Staff expressly reserves the right to take whatever action is necessary and appropriate to enforce the terms of this Settlement Agreement.

6. The Staff and Dr. Elamir understand and agree that this Settlement Agreement is limited to the issues in and the parties to the above-captioned proceeding.

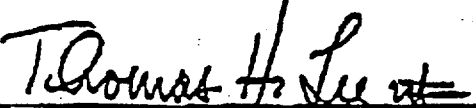
7. The Staff and Dr. Elamir understand and agree that this Settlement Agreement does not constitute and should not be construed to constitute any admission or admissions in any regard by Dr. Elamir regarding any matters set forth by the NRC in its Order or Superseding Order.

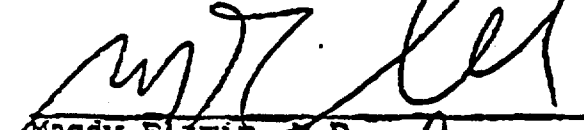
8. The Staff and Dr. Elamir understand and agree that the matters upon which the Superseding Order is based have not been resolved as a result of this Settlement Agreement; this

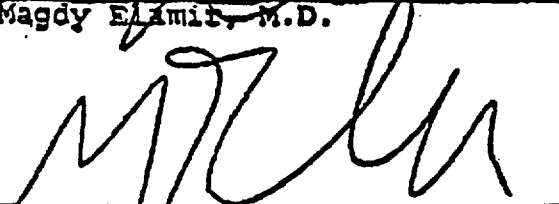
Settlement Agreement shall not be relied upon by any person or other entity as proof or evidence of any of the matters set forth in the Superseding Order, in the Inspection Report dated September 4, 1997, or in the Report of the Office of Investigation dated July 23, 1997.

9. The Staff and Dr. Elamir shall jointly move the Atomic Safety and Licensing Board for an order approving this Settlement Agreement and terminating the above-captioned proceeding.


FOR MAGDY ELAMIR, M.D.


Thomas H. Lee, II, Esquire
Counsel for Magdy Elamir, M.D.


Magdy Elamir, M.D.


Newark Medical Associates, Inc.
by Dr. Magdy Elamir, President

FOR THE NRC STAFF:


Catherine L. Marco, Esquire
Counsel for the NRC Staff


James Lieberman
Director, Office of Enforcement
Nuclear Regulatory Commission

Dated this 1st day of October, 1998

c:\docs\newark\settlems.egg

NUCLEAR REGULATORY COMMISSION

In the Matter of

MAGDY ELAMIR, M.D.

(Superseding Order Prohibiting
Involvement in Licensed Activities)

Docket No.(s) IA 97-070

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-98-25) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ann P. Hodgdon, Esquire
Catherine L. Marco, Esquire
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Thomas H. Lee, II, Esquire
Rachel Nosowsky, Esquire
Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103

Perry D. Robinson, Esquire
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005

Dated at Rockville, Md. this
8 day of October 1998


Office of the Secretary of the Commission

NUCLEAR REGULATORY COMMISSION

In the Matter of

MAGDY ELAMIR, M.D.

(Superseding Order Prohibiting
Involvement in Licensed Activities)

Docket No.(s) IA 97-070

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LBP-98-25 CORR. P. 3 - SETTL.* have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ann P. Hodgdon, Esquire
Catherine L. Marco, Esquire
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Thomas H. Lee, II, Esquire
Rachel Nosowsky, Esquire
Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103

Perry D. Robinson, Esquire
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005

Dated at Rockville, Md. this
15 day of October 1998


Office of the Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 31, 1999

IA 98-059

Dr. Mohamed El Naggar
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Inspection Report 030-33414/98001(DNMS) and NRC Office of
Investigations (OI) Report No. 3-98-029)**

Dear Dr. El Naggar:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate violation of Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3 of the Commission's regulations, as described in the Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of the Order may also subject the person to a civil monetary penalty.

Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm R. Knapp".

Malcolm R. Knapp,
Deputy Executive Director
For Regulatory Effectiveness

Enclosure: Order Prohibiting Involvement in NRC-licensed Activities

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) IA 98-059
Dr. Mohamed El-Naggar)
)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Dr. Mohamed El-Naggar (Dr. El-Naggar) is the owner of Diversified Global Enterprise Company (DGE), neither an NRC licensee nor an Agreement State licensee. DGE purchased the physical assets of DAS Consult, Inc., (DAS or Licensee), including, in particular, DAS assets subject to an NRC license. DAS is the holder of Byproduct Material License No. 34-26551-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorized possession and use of moisture density gauges containing byproduct material in accordance with the conditions specified therein.

II

Between June 19 and 25, 1998, the NRC conducted an inspection of DAS's licensed activities to determine if byproduct material was being used, stored, or transferred in accordance with NRC regulations. The inspection was initiated because DAS failed to pay its annual fee and attempts to contact the Licensee by telephone and mail were unsuccessful. The NRC inspector discovered that, in January 1997, the physical assets of DAS, including six moisture density gauges containing certain byproduct material, were sold to DGE. The gauges contained sufficient quantities of cesium-137 and americium-241 to require persons who possess these

devices to hold a specific NRC license. No person may receive or possess byproduct material except as authorized by a specific or general license as required pursuant to Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3. Neither Dr. El-Naggar nor DGE had an NRC license.

On June 29, 1998, the NRC Office of Investigations (OI) initiated an investigation to determine, among other things, whether DGE possessed six moisture density gauges containing byproduct material in willful violation of NRC requirements. Based on the evidence obtained by OI and during a predecisional enforcement conference with Dr. A. Abdulshafi, the owner of DAS, on January 5, 1999, the NRC staff concludes that DGE, through the conduct of Dr. El-Naggar, possessed byproduct material in deliberate violation of NRC requirements. Between January and May 1997, the gauges containing byproduct material remained at the original DAS location on Kenny Road, where they were tended by Dr. A. Abdulshafi, and trained gauge users who had been authorized to use the devices under the DAS license. On or about June 1997, DGE moved the gauges to another location, and the business association between DGE and DAS ended. Dr. El-Naggar was repeatedly informed by one of his employees between May and June 1997 that DGE was required to have an NRC license to possess the gauges. However, Dr. El-Naggar did not submit an application for an NRC license. In June 1998, as a result of the NRC inspection at DAS, DAS retrieved the gauges from DGE and properly transferred them to a company authorized to possess and use them.

Between December 1, 1998 and January 20, 1999, three attempts were made by the NRC staff to schedule a predecisional enforcement conference with Dr. El-Naggar. The NRC staff was unsuccessful in scheduling this conference with Dr. El-Naggar.

III

Based on the above, it appears that Dr. El-Naggar, owner of DGE, deliberately violated Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3. Specifically, the NRC has concluded that Dr. El-Naggar, knowingly possessed six Troxler moisture density gauges containing byproduct material without an NRC license. Dr. El-Naggar's conduct has raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, in light of the nature of the violation, the length of time the noncompliance existed, and the deliberate nature of the violation, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. El-Naggar were permitted to be involved in any NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. El-Naggar be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. Additionally, Dr. El-Naggar is required to notify the NRC of his subsequent employment in NRC-licensed activities for a one year period following the prohibition period.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Dr. El-Naggar is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Dr. El-Naggar is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.
3. For a period of one year after the one year period of prohibition has expired, Dr. El-Naggar shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Dr. El-Naggar shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

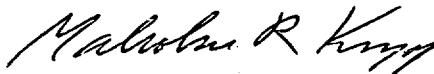
The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Dr. El-Naggar of good cause.

In accordance with 10 CFR 2.202, Dr. El-Naggar must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. El-Naggar or other persons adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and to Dr. El-Naggar if the answer or hearing request is by a person other than Dr. El-Naggar. If a person other than Dr. El-Naggar requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. El-Naggar or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Dated at Rockville, Maryland
this 31 day of March 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 19, 1999

IA 99-049

Randall G. Falvey
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-1998-043)

Dear Mr. Falvey:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Order) is being issued to you based on an investigation by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The NRC-approved security manual for the Wisconsin Public Service Corporation's (WPSC) Kewaunee Nuclear Power Plant requires that all on-site firearms, including shotguns, be test fired annually. The OI investigation determined that you were responsible for ensuring weapons used by the security force at the Kewaunee Nuclear Power Plant were test fired annually and you failed to ensure that 11 shotguns during 1997 and nine shotguns in 1998 were test fired. At that time, you were employed as the training manager for the Wackenhut Corporation, a contractor at the Kewaunee Nuclear Power Plant. The OI investigation also found that you deliberately falsified the records for those tests and you provided false information to the plant security director during the WPSC investigation of this matter. The records are material to the NRC because they demonstrate compliance with the NRC-approved Kewaunee Nuclear Power Plant Security Manual and Condition No. 2.C.(4) of NRC Operating License No. DPR-43 for the Kewaunee Nuclear Power Plant.

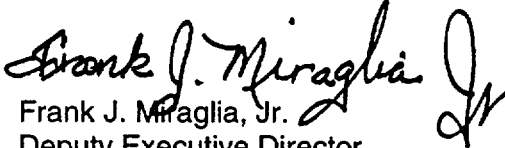
The enclosed Order prohibits your involvement in NRC-licensed activities for a period of three years. In addition, subsequent to the three-year period, the Order requires you to notify the NRC the first time you accept employment involving NRC-licensed activities or your becoming involved in NRC-licensed activities. Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

By letter dated July 22, 1999, the NRC offered you the opportunity to discuss the NRC findings at a predecisional enforcement conference (PEC) or to submit a written explanation by August 21, 1999. The July 22, 1999 letter also explained that if you did not request a PEC or respond by letter, the NRC would proceed with its enforcement action. The letter was sent to you and your attorney. As of the date of this letter, you had not replied to the NRC's July 22, 1999 letter.

Questions concerning this Order should be addressed to R. W. Borchardt, Director, Office of Enforcement, who can be reached at (301) 415-2741. Also enclosed is the Notice of Violation issued to WPSC for the falsification of records that was based on your deliberate actions.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures, with your home address removed, will be placed in the NRC Public Document Room (PDR).

Sincerely,


Frank J. Miraglia, Jr.
Deputy Executive Director
for Regulatory Programs

Docket No. 50-305
License No. DPR-43

Enclosures: As stated

cc w/encs: **WITH HOME ADDRESS REMOVED**

Mark R. Rohrer, Esq.
Olson, Winter and Fox
Mark L. Marchi, Site Vice President
Kewaunee Nuclear Power Plant

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Randall G. Falvey

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)
)
)

IA 99-049

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Randall G. Falvey was employed from January 3, 1994 to October 30, 1998, as the training manager for the Wackenhut Corporation, the security contractor of the Wisconsin Public Service Corporation (Licensee). The Licensee holds license No. DPR-43 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on June 16, 1974. The license authorizes the operation of the Kewaunee Nuclear Power Plant (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site near Green Bay, Wisconsin.

II

From December 21, 1998 to June 21, 1999, an investigation of licensed activities was conducted by the NRC Office of Investigations (OI) in response to information provided to NRC Region III by the Licensee on October 14, 1998. The Licensee reported that information had been received which indicated the annual test firing of shotguns used by the security force at the Kewaunee Nuclear Power Plant was not performed when due. The Licensee conducted an investigation and determined that Mr. Randall G. Falvey, the training manager for the Wackenhut Corporation, was assigned the responsibility for ensuring that each firearm at this

site, including shotguns, was test fired annually. The investigation by the Licensee determined that Mr. Falvey had not ensured that 11 shotguns during 1997 and nine shotguns during 1998 were tested. The investigation by the Licensee also established that Mr. Falvey falsified the records of those tests in order to show that the tests had been conducted. The Licensee also reported that two shotguns which Mr. Falvey had not tested and for which he had falsified test records, failed to properly cycle during the test firing following the identification of this issue.

The OI investigation also determined that during the Licensee's investigation of this matter, Mr. Falvey provided false information about the test firings to the Licensee's Security Director for the Kewaunee Nuclear Power Plant. In a written statement to the Security Director, Mr. Falvey wrote that he had completed the test firings on the shotguns. However, review of Kewaunee Plant security access records during the licensee's investigation for May 1997 and May and June 1998, on the dates that Mr. Falvey indicated that the shotguns were tested, showed both that Mr. Falvey had, in some instances, not entered areas where shotguns were stored and, in other instances, that Mr. Falvey had not stayed in an area long enough to retrieve a shotgun for testing and replace it with another. Security personnel were interviewed and none could recall retrieving or firing a shotgun at Mr. Falvey's request. Furthermore, Mr. Falvey could not provide the name of any individual who may have retrieved or test fired a shotgun at the direction of Mr. Falvey. Other records indicated that none of these firearms were taken to the firing range or cleaned after test firing.

Condition No. 2.C.(4) of the NRC operating license for the Kewaunee Nuclear Power Plant requires the Licensee to maintain in effect and fully implement all provisions of the Commission-approved Kewaunee Nuclear Power Plant Security Manual and the Licensee's Security

Equipment." The annual testing of site-assigned weapons, including shotguns, and the creation and maintenance of records of those tests are required by the NRC-approved Kewaunee Nuclear Power Plant Security Manual and the procedures implementing that manual. 10 CFR 50.9(a), "Completeness and Accuracy of Information," provides, in part, that information required by a condition of a Commission license to be maintained by a licensee must be complete and accurate in all material respects. 10 CFR 50.5(a)(2), "Deliberate Misconduct," provides in part that a contractor employee of a Commission licensee may not deliberately submit to a licensee or a licensee's contractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The records of the shotgun tests are material to the NRC because each record helps to demonstrate the Licensee's compliance with the requirements of the NRC-approved Kewaunee Nuclear Power Plant Security Manual. Based on the Licensee's and OI's investigations, it appears that Randall G. Falvey deliberately provided information to the Licensee that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 50.5. In particular, on October 12, 1998, Mr. Falvey created false records indicating that a number of shotguns had been tested during May 1997 and May - June 1998, and on October 14, 1998, Mr. Falvey told the Licensee's Security Director that the shotguns had been tested as required.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirements to provide information and maintain records that are complete and accurate in all material respects and to refrain from deliberate misconduct. The actions of Randall G. Falvey in causing the Licensee to violate 10 CFR 50.9 and his violation of 10 CFR 50.5 have raised serious doubt as to whether Mr. Falvey can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Randall G. Falvey were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Randall G. Falvey be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Randall G. Falvey is required to notify the NRC of his first employment in NRC-licensed activities for the three years following the prohibition period.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Randall G. Falvey is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Randall G. Falvey is currently involved with a licensee in NRC-licensed activities, he must cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of three years after the three year period of prohibition has expired, Randall G. Falvey shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the first notification Randall G. Falvey shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Randall G. Falvey of good cause.

V

In accordance with 10 CFR 2.202, Randall G. Falvey must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Randall G. Falvey or other

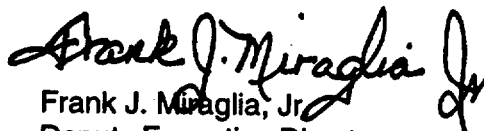
person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to Randall G. Falvey if the answer or hearing request is by a person other than Mr. Falvey. If a person other than Randall G. Falvey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Randall G. Falvey or a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time

for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION


Frank J. Miraglia, Jr.
Deputy Executive Director
for Reactor Programs

Dated this Th 19 day of October 1999
Rockville, Maryland



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 24, 1999

IA 98-006

Mr. Gary Isakoff
HOME ADDRESS DELETED
UNDER 2.790

Dear Mr. Isakoff:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Office of Investigations Reports No. 1-97-001 and 1-98-002)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you based on your deliberate falsification of a weekly wipe test survey for removable contamination in the hot lab for the week ending September 28, 1996, and your repeated and willful inaccurate recordation and failure to record information pertaining to the administration of doses on Dose Dispensing Forms (DDFs). At the time of this conduct, you were the Assistant Chief Nuclear Medicine Technologist at Temple University Hospital (TUH). The synopses of the two investigations were forwarded to you on February 20, 1998, and October 27, 1998, respectively.

A predecisional enforcement conference was held with you on November 19, 1998, to discuss these violations, during which you denied that you had falsified any records. The NRC staff, however, has concluded that you falsified and failed to complete records as required by NRC requirements, as explained in the enclosed Order. Your deliberate falsification of the weekly wipe test survey constituted a violation of 10 C.F.R. §30.10(a)(2) which provides, in part, that an employee of a licensee may not deliberately submit information to a licensee that the employee knows to be inaccurate or incomplete in some respect material to the NRC. Specifically, you deliberately caused TUH to violate 10 C.F.R. §§ 35.70(e) and (h) and 30.9, "Completeness and Accuracy of Information", by creating a record of a weekly wipe test survey that you in fact did not perform. In addition, you fabricated a record of a bar phantom test dated September 28, 1996. Moreover, you put TUH in violation of 10 C.F.R. § 35.53 by willfully failing to record information regarding patient dose assays on multiple DDFs, and you put TUH in violation of 10 C.F.R. § 30.9 by willfully recording inaccurate information regarding patient dose assays on numerous DDFs.


The Order prohibits your involvement in licensed activities for one year, and requires that for one year thereafter you shall provide notice to the NRC Office of Enforcement of your acceptance of any offers of employment involving NRC-licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741. Also enclosed is a letter to TUH dated February 20, 1998, issuing a Notice of Violation related to the

falsification of the wipe test record, and a letter to TUH issued concurrently with this action, explaining that the NRC is exercising enforcement discretion to not take enforcement action against TUH for your falsification of DDF records.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



Dr. Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
2. Letter from Malcolm R. Knapp to Temple University
3. Letter Dated February 20, 1998, from Hubert J. Miller to Temple University

cc w/encls:

Leon Malmud, M.D., Temple University Hospital
Commonwealth of Pennsylvania

ENCLOSURE

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

MR. GARY ISAKOFF

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)
)
)

IA 98-006

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Mr. Gary Isakoff (Mr. Isakoff) was the Assistant Chief Nuclear Medicine Technologist in the Nuclear Medicine Department (NMD) of Temple University Hospital (TUH or licensee) between December 1990 and February 13, 1997. TUH holds Facility License No. 37-00697-31, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 C.F.R. Parts 30 and 35, which authorizes TUH to use byproduct material for medical use and research and development.

II

Between January 15 and September 30, 1997, an investigation was conducted by the NRC Office of Investigations (OI) to determine if Mr. Isakoff, while functioning as the Assistant Chief Nuclear Medicine Technologist (a first line supervisor), deliberately falsified a record of a weekly wipe test survey for removable contamination of the hot lab. A second OI investigation was conducted between January 20 and August 31, 1998, to determine whether Mr. Isakoff routinely failed to record or to accurately record on Dose Dispensing Forms (DDFs) information required by 10 C.F.R. § 35.53, pertaining to the administration of radiopharmaceutical doses to patients, and whether Mr. Isakoff boosted doses of radiopharmaceuticals to patients above the

prescribed dosages without authorization from an authorized user. A predecisional enforcement conference was held with Mr. Isakoff on November 19, 1998.

TUH is required to conduct surveys for removable contamination once each week of all areas where radiopharmaceuticals are routinely prepared for use, administered or stored, and to retain a record of each such survey for three years. 10 C.F.R. §§ 35.70 (e) and (h). Mr. Isakoff maintained at the predecisional enforcement conference that he did in fact perform a weekly wipe test survey of the hot lab for removable contamination on Saturday, September 28, 1996, and that he accurately recorded the results of that survey. Based upon all the evidence, the NRC staff concludes, for reasons explained below, that Mr. Isakoff did not perform a wipe test survey of the hot lab for the week ending September 28, 1996, and that he deliberately created licensee records to falsely indicate that he had performed a weekly wipe test survey of the hot lab on September 28, 1996.

Due to a boil-over, a spill of a Technetium-99m sulfur colloid had occurred in the hot lab on Thursday, September 26, 1996. A Nuclear Medicine Technologist (NMT) stated to investigators that on Monday September 30, 1996, Mr. Isakoff instructed her to tell anyone who asked that she had performed a wipe test survey of the hot lab on September 28. That NMT had not performed such a survey on September 28, 1996. A second NMT overheard Mr. Isakoff's instruction. On Tuesday, October 1, Mr. Isakoff asked the first NMT if the NRC, which was at the facility conducting an inspection on that date, had inquired about the weekly wipe test survey during its visit. The NMT told Mr. Isakoff that she would not lie if asked about the weekly wipe test survey. On Wednesday, October 2, Mr. Isakoff told the NMT that he "forgot" that he did come in on Saturday, September 28, and that he had in fact performed a wipe test survey of

the hot lab on that date. Mr. Isakoff stated at the enforcement conference that because of the spill, he and others expected that the NRC would come to TUH the following week, and as a result, he worked on Saturday, September 28, to ensure that everything was perfect, and is certain he performed the weekly wipe test survey that day.

There is no reliable documentary evidence to corroborate Mr. Isakoff's statement that he was in the NMD on Saturday, September 28, and no witness to his presence. Mr. Isakoff did not have on-call responsibilities and thus was not scheduled to work on weekends. He stated that, nonetheless, he frequently worked evenings during the week, and on Saturdays or Sundays approximately once or twice per month, in order to complete paperwork and make sure tests such as wipe surveys and bar phantom tests had been performed, and that he made a point of informing his supervisors when he did so. The Chief NMT, however, stated that Mr. Isakoff did not mention working on Saturdays or on September 28, 1996, until several weeks later, after the licensee became aware that the September 28, 1996, wipe test record might have been falsified.

Although the wipe test instrument register automatically prints the date and time of a wipe test on the instrument register strip, that portion of the strip showing the date and time of the wipe test, which Mr. Isakoff claims to have performed on September 28, 1996, was missing and appears to have been deliberately torn off. The register strip was stapled to a department wipe test form dated September 28 and signed by Mr. Isakoff.

The only other documentary evidence of Mr. Isakoff's presence in the NMD on September 28, 1996, consists of a bar phantom test record which, as explained below, was falsely dated

September 28. Mr. Isakoff stated during the enforcement conference that when he came in on weekends, he generally completed paperwork and sometimes performed bar phantom tests for the NMD cameras. Bar phantom tests are quality assurance tests performed to ensure that resolution of the cameras is adequate, and although not an NRC requirement, are required by licensee procedures to be performed on a weekly basis. On November 19, 1996, Mr. Isakoff stated during an interview with an investigator for TUH concerning possible falsification of the weekly wipe test survey for September 28, 1996, that he had performed one or two bar phantom tests on September 28, 1996. Such test records would presumably provide an indication of Mr. Isakoff's presence in the NMD on September 28, 1996. However, the licensee examined its bar phantom test and computer records because on November 21, 1996, the Director of the NMD found a record of a bar phantom test, dated September 28, 1996, which had not been present during the Director's review of bar phantom test records on November 20, 1996. The licensee subsequently determined, during an internal investigation, that the bar phantom test record dated September 28, 1996, was in fact a copy of a record of a bar phantom test performed on August 23, 1996, and that the September 28 date had been inserted sometime between November 20 and 21, 1996, through computer manipulation. As such, this bar phantom test record, although not an NRC requirement, was also falsified and cannot be used as evidence of Mr. Isakoff's presence in the NMD on September 28, 1996.

Based on the above, the NRC concludes that Mr. Isakoff did not perform a weekly wipe test of the hot lab for removable contamination for the week ending Saturday, September 28, 1996; that he deliberately falsified licensee weekly wipe test survey records after an NMT refused his September 30 request to falsely claim that she had performed a wipe test of the hot lab on September 28; and that he deliberately created a bar phantom test record falsely dated

September 28, to conceal the fact that he had falsified a record required by the NRC. The Chief NMT stated that it was the responsibility of Mr. Isakoff and the Clinical Chief NMT to ensure that the weekly wipe test survey was performed. Mr. Isakoff acknowledged that he was aware of the requirement to perform a weekly wipe test survey of the hot lab, and admitted that he, among others, had responsibility, as Assistant Chief NMT for ensuring that such surveys were performed. Accordingly, the NRC concludes that, in violation of 10 C.F.R. § 30.10(a)(2), Mr. Isakoff deliberately submitted materially inaccurate information to the licensee.¹

Additionally, based on all the evidence, the NRC staff concludes that Mr. Isakoff willfully recorded inaccurate information pertaining to dose administration on numerous DDF records and failed to record such information at all on multiple DDFs, thus putting the licensee in violation of 10 C.F.R. §§ 30.9 and 35.53, respectively. Licensees are required to measure the activity of each dosage of photon-emitting radionuclides prior to medical use, and to retain a record of the measurement for three years, in accordance with 10 C.F.R. § 35.53. TUH used the DDF to satisfy Section 35.53.

A comparison of DDFs to patient records for July and October 1995 reveals that numerous DDFs completed by Mr. Isakoff for specific patients reported syringe assay amounts different from doses reported for the same patients on the NMC-1 Form.² A review of DDFs for the period January 1995 through December 1997 revealed multiple incomplete DDFs due to Mr.

¹ On February 20, 1998, the NRC issued a Notice of Violation to TUH for its violation of 10 C.F.R. §§ 35.70 and 30.9, caused by Mr. Isakoff's failure to conduct the weekly wipe test survey and his falsification of wipe test records.

²The NMC-1 Form (Nuclear Medicine Consultation Form) is an internal document of TUH's NMD which is used to record the technologist name, administered dose, and route of administration for a radiopharmaceutical. The form also contains pertinent clinical history and details of the examination being performed

Isakoff's failure to record the assayed dose. During the course of one day in October 1995, Mr. Isakoff failed to record the assayed dose on DDFs for four patients, which was documented in two memoranda dated October 3, 1995, created by the Chief NMT and the Administrative Chief NMT. Two former supervisors of Mr. Isakoff stated that he consistently failed to record information pertaining to dose administration on DDFs. Three NMTs stated that Mr. Isakoff, when confronted with DDFs which had not been completed for patients, would complete the forms without verifying the numbers or by pulling numbers out of the air. During the enforcement conference, Mr. Isakoff admitted that sometimes he did not record the syringe assay of the dose as soon as it was assayed, or did not record the dose assay at all until it was brought to his attention during monthly reviews of the DDFs by others. Mr. Isakoff also stated that he was aware of the NRC requirement to record administration of radioisotopes to patients, that he had been admonished by the Chief NMT for failure to complete DDFs, and that he himself had admonished NMTs for failure to complete DDFs.

Based on the above, the NRC concludes that Mr. Isakoff willfully failed to record the activity of each dosage prior to administration on multiple occasions in violation of 10 C.F.R. § 35.53, and willfully failed to accurately record the activity of each dosage on numerous DDFs in violation of 10 C.F.R. § 30.9.

III

Based on the above, it appears that Gary Isakoff, when involved in licensed activities in a supervisory capacity, deliberately submitted information to TUH which was inaccurate in respects material to the NRC, in violation of 10 C.F.R. § 30.10(a)(2), specifically: (1) a wipe test

survey instrument register strip and a department wipe test form, both documenting a survey Mr. Isakoff claimed to have performed for removable contamination in the hot lab on September 28, 1996, was submitted notwithstanding that Mr. Isakoff in fact did not perform the survey; and (2) a bar phantom test record dated September 28, 1996, which was in fact conducted on August 23, 1996, and not on September 28, 1996, was provided by Mr. Isakoff as evidence that he was in the hot lab on September 28, 1996. In addition, Mr. Isakoff caused the Licensee to be in violation of 10 C.F.R. § 30.9 by willfully failing to accurately record information pertaining to dose administration on numerous DDFs, and caused the licensee to be in violation of 10 C.F.R. § 35.53 by willfully failing to record the assayed dose at all on multiple DDFs.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to maintain records that are complete and accurate in all material respects. Mr. Isakoff's actions in deliberately submitting materially inaccurate information to the licensee, in willfully causing the licensee to violate Commission requirements, and in his request to a subordinate to falsely claim that she had conducted surveys pursuant to NRC requirements, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to submit and maintain complete and accurate information and records.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Isakoff were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Mr. Isakoff be prohibited from any involvement in NRC-licensed activities

for a period of one year. If, on the effective date of this Order, Mr. Isakoff is involved in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Isakoff is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Gary Isakoff is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If, on the effective date of this Order, Mr. Isakoff is involved in NRC-licensed activities, he must, on the effective date of this Order, immediately cease those activities, provide a copy of this Order to the employer, and inform the NRC of the name, address and telephone number of the employer.

3. For a period of one year after the one year period of prohibition has expired, Mr. Isakoff shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Mr. Isakoff shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Isakoff of good cause.

V

In accordance with 10 CFR 2.202, Mr. Isakoff must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Isakoff or other

person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Isakoff if the answer or hearing request is by a person other than Mr. Isakoff. If a person other than Mr. Isakoff requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Isakoff or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a

Enclosure

11

hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, reading "Malcolm R. Knapp". The signature is written in a cursive style with a large, stylized initial 'M'.

**Dr. Malcolm R. Knapp
Deputy Executive Director for
Regulatory Effectiveness**

**Dated at Rockville, Maryland
this 24 day of February, 1999**

NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

In the Matter of

GARY ISAKOFF

Order Prohibiting Involvement
in NRC-Licensed Activities

Docket No. IA 98-006

ASLBP No. 99-765-02-EA

August 11, 1999

MEMORANDUM AND ORDER
(Approving Settlement Agreement and Dismissing Proceeding)

On August 2, 1999, both parties to this enforcement proceeding--Mr. Gary Isakoff and the NRC Staff--filed a joint motion asking this Atomic Safety and Licensing Board to approve a settlement agreement (a copy of which is attached). The agreement provides that there has been no adjudication of any wrongdoing by Mr. Isakoff; and that, as a compromise of disputed claims, the agreement is not to be construed as an admission by Mr. Isakoff or a concession by the NRC Staff. Each party is to bear its own fees and costs. Also, the agreement provides that the Order against Mr. Isakoff is to be withdrawn and that the Staff will not take any future action against Mr. Isakoff for the activities described in the Staff's Order.

Furthermore, the agreement states that Mr. Isakoff's request for a hearing is withdrawn and, for a period of a

OGC-99- 003413

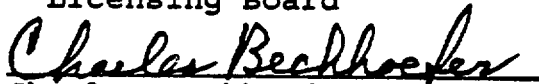
year, Mr. Isakoff is not to engage in NRC-licensed activities. For an additional three-year period, Mr. Isakoff is to inform the Staff within 20 days of accepting employment involving NRC-licensed activities. Under the Staff's proposed Order, Mr. Isakoff would have been suspended for a year, with a reporting requirement extending for an additional year.


Pursuant to 10 C.F.R. § 2.203, where, as here, a notice of hearing has been issued, we are authorized to entertain a compromise and approve a settlement, according "due weight" to the position of the Staff. By the August 2, 1999 motion, the Staff has indicated that the settlement is "fair and equitable."


According due weight to the position of the Staff, we hereby approve the attached settlement agreement and dismiss the proceeding.

IT IS SO ORDERED.

The Atomic Safety and
Licensing Board


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE


Dr. Richard F. Cole
ADMINISTRATIVE JUDGE


Dr. Charles N. Kelber
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 11, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
GARY ISAKOFF

)
)
)

Docket No. IA 98-006
(ASLBP No. 99-765-02-EA)

SETTLEMENT AGREEMENT

WHEREAS, on February 24, 1999, the staff (Staff) of the U.S. Nuclear Regulatory Commission (NRC) issued an "Order Prohibiting Involvement in NRC-Licensed Activities" (Order) captioned IA 98-006 to Gary Isakoff (Mr. Isakoff). See 64 Fed. Reg. 11954 (March 10, 1999).

WHEREAS, on March 16, 1999, Mr. Isakoff answered the Order, denying all of the staff's allegations against him, and requested a hearing.

WHEREAS, it is in the public interest to terminate this proceeding without further litigation and without reaching the merits of the Order, subject to the approval of the Atomic Safety and Licensing Board (Board).

NOW THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. There has not been any adjudication of any wrongdoing by Mr. Isakoff. This Settlement Agreement shall not for any purpose be construed as an admission by Mr. Isakoff or as a concession by the NRC, and is a compromise of disputed claims. Each party shall bear its own fees and costs.

2. The February 24, 1999, Order issued to Mr. Isakoff shall be withdrawn upon the approval of this Settlement Agreement by the Board. The Staff will not take any future enforcement action against Mr. Isakoff based on Mr. Isakoff's activities as a Temple University Hospital employee as described in the February 24th Order. However, in the event Mr. Isakoff breaches this Settlement Agreement, the February 24th Order shall be reinstated and Mr. Isakoff hereby waives his right to contest such reinstatement.

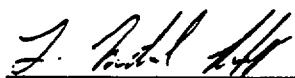
3. Mr. Isakoff's March 16, 1999, request for a hearing is withdrawn, and he waives his right to a hearing in this matter and his right to contest or otherwise appeal this Settlement Agreement once approved by the Board. Mr. Isakoff's withdrawal and waiver will become effective only upon approval of this Settlement Agreement by the Board.

4. For a period of one year from the date of approval of this Settlement Agreement by the Board, Mr. Isakoff will not engage in NRC-licensed activities, or seek employment involving such activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 C.F.R. § 150.20.

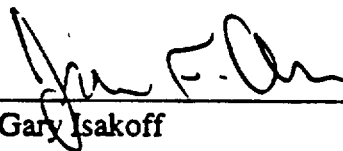
5. For a period of three years following the expiration of the one-year period described in Paragraph 4, Mr. Isakoff will inform the NRC within 20 days of accepting any employment involving NRC-licensed activities.

6. The Staff and Mr. Isakoff will file a joint motion requesting the Board to approve this Settlement Agreement and terminate the proceeding, pursuant to the Commission's regulations in 10 C.F.R. § 2.203.

IN WITNESS THEREOF, Mr. Isakoff and the Staff have caused this Settlement Agreement to be executed by their parties or their duly authorized representatives on this 28th day of July, 1999.



L. Michael Rafky, Esquire
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(Counsel for NRC Staff)



Gary Isakoff

John F. O'Riordan, Esquire
Eckert Seamans Cherin
& Mellot, LLC
1515 Market Street
Ninth Floor
Philadelphia, PA 19102
(Counsel for Gary Isakoff)

Dated at Rockville, Maryland
this 28th day of July, 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 16, 1996

IA 96-042

Mr. Mark Jenson
[HOME ADDRESS DELETED
UNDER 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES

Dear Mr. Jenson:


The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 of the Commission's regulations, as described in the Order. The Order becomes effective in 20 days unless a hearing is requested within this time.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order, once it becomes effective, shall be subject to criminal prosecution as set forth in that section. Failure to comply with the provisions of this Order may also result in civil sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Material Safety, Safeguards
and Operations Support

Enclosure: Order Prohibiting Involvement
in NRC-Licensed Activities

cc: Commonwealth of Puerto Rico

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)

Mark A. Jenson)
[HOME ADDRESS DELETED)
UNDER 10 CFR 2.2790]

IA 96-042

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Mark A. Jenson was employed as President of NDT Services, Inc. in Caguas, Puerto Rico, in 1993. NDT Services, Inc. (NDTS or Licensee) holds License No. 52-19438-01, issued to the Licensee in 1987 and last amended by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on March 9, 1995. The license authorizes industrial gamma ray radiography in accordance with the conditions specified therein. Mr. Jenson was identified in a letter from the Licensee to NRC, dated September 4, 1993, and in other licensing and inspection correspondence, as the President, NDTS.

II

On December 16-17, 1993, a special inspection of NDTS' activities was conducted at the Licensee's facility in Caguas, Puerto Rico, in response to notifications received in the NRC Region II office that on September 4, 1993, two contract radiographers¹ employed by NDTS had been unable to return a radiography source to its shielded position following radiographic operations, which resulted in the evacuation of the Sun Oil Company refinery in Yabucoa,

¹ The radiographers involved in the event were contracted by NDTS from National Inspection and Consultants (NIC), an Agreement State licensee in Florida. While no written contract was established to outline the scope and conditions of work, based on the information available, the NRC concluded that the work performed on September 4, 1993, was performed under the provisions of the NDTS license.

Puerto Rico, for several hours. Based on the results of the inspection, an investigation was initiated by the NRC Office of Investigations (OI) on December 30, 1993.

On December 21, 1995, OI completed its investigation and concluded, in part, that NDTs, with the knowledge and approval of the former Radiation Safety Officer (RSO) and former President, deliberately utilized radiographers untrained in NDTs operating and emergency procedures. During an August 31, 1995 interview with OI, Mr. Jenson stated that he was aware that even a highly qualified radiographer from another company must receive additional training before operating under NDTs' program. Mr. Jenson further stated that, prior to the September 4, 1993 incident, NDTs' former RSO told Mr. Jenson that the radiographers needed additional training prior to performing radiography. Nonetheless, Mr. Jenson allowed the radiographers to conduct licensed activities without the required training. In addition, Mr. Jenson stated that, following the September 4, 1993 incident, he requested both radiographers to sign a document certifying that the radiographers had been trained by NDTs, when in fact, they had not been. The radiographers refused to sign the document. Furthermore, during a May 10, 1995 transcribed interview with OI, one of the radiographers corroborated Mr. Jenson's admission (i.e., that Mr. Jenson asked the radiographer to sign a document indicating that the radiographer had been trained).

By letter dated February 20, 1996, Mr. Jenson was informed of the inspection and investigation results and was provided the opportunity to participate in a predecisional enforcement conference. Although the NRC has confirmation that

Mr. Jenson received the letter (i.e., returned certified mail receipt as well as a telephone acknowledgement by his spouse to the NRC on February 29, 1996), Mr. Jenson never responded to the letter and, therefore, no conference has been conducted with him. However, on May 17, 1996, a teleconference was conducted with Mr. Jenson to further discuss this case. Additionally, on February 29 and March 4, 1996, predecisional enforcement conferences were conducted with one of the contract radiographers, and NDTs, respectively.

Based on the information gathered during the inspection, investigation, predecisional enforcement conferences, and subsequent interviews in this case, the NRC has determined that: (1) Mr. Jenson deliberately permitted unqualified radiographers to perform radiography for NDTs on September 4, 1993, in that he knew the radiographers had not been trained in NDTs procedures or equipment; and (2) Mr. Jenson attempted to generate a false, NRC-required training record for the contract radiographers involved in the source disconnect event when, subsequent to September 4, 1993, he requested both individuals to sign a document indicating that the individual had been trained in the NDTs radiation safety manual and procedure, when in fact, the contract radiographer had not been trained.

III

Based on the above, the staff concludes that Mr. Jenson engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 34.31(a) by failing to utilize trained and qualified individuals for the conduct of radiographic operations at the Sun Oil Company

refinery on September 4, 1993. Mr. Jenson's attempt to generate a falsified training record for the radiographer also demonstrates a lack of integrity which cannot be tolerated. As the former President of NDTs, Mr. Jenson was responsible for ensuring that NDTs conducted activities in accordance with NRC requirements. The NRC must be able to rely on the Licensee, its officials and employees to comply with NRC requirements, including the requirements to train radiographers in accordance with NRC regulations and to maintain complete and accurate information required by the NRC. Mr. Jenson's deliberate misconduct in causing the Licensee to violate 10 CFR 34.31(a) is a violation of 10 CFR 30.10 and has raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Jenson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Jenson be prohibited from any involvement in NRC-licensed activities for a period of five years, and, if he is currently involved with another licensee in NRC-licensed activities, he must, following the effective date of this Order, cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Jenson is required to notify the NRC of his first employment involving NRC-licensed activities within a period of five years following the five-year prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

- A. For a period of five years from the effective date of this Order, Mark A. Jenson is prohibited from engaging in, or exercising control over individuals engaged in, NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.
- B. At least five days prior to the first time that Mark A. Jenson engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition period outlined in Section IV.A above, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath

or affirmation, that Mark A. Jenson understands NRC requirements, that he is committed to compliance with NRC requirements, and that provides a basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Jenson of good cause.

V


In accordance with 10 CFR 2.202, Mark A. Jenson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Jenson or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, Atlanta, GA 30323, and to Mark A. Jenson, if the answer or hearing request is by a person other than Mark A. Jenson. If a person other than Mark A. Jenson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mark A. Jenson, or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 16th day of July 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 15, 1997

IA 97-026

Mr. David F. Johns, P.E.
President and Radiation
Safety Officer
Capital Engineering Services, Inc.
101 Weston Drive Unit 3
Dover, Delaware 19901

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Inspection No. 030-33244/96-001 and NRC Office of
Investigation Report No. 1-96-042)

Dear Mr. Johns:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate use of licensed material on numerous occasions after Capital Engineering Services, Inc.'s License had been suspended, a violation of 10 CFR 30.10. The Order requires, in part, that: (1) for a period of three years, you are prohibited from engaging in NRC-licensed activities; (2) for a period of three years, you provide a copy of the Order to any prospective employer who engages in NRC-licensed activities prior to your acceptance of employment involving non-NRC-licensed activities with such prospective employer; and (3) the first time you are employed in NRC-licensed activities following the three-year prohibition, you notify the NRC prior to engaging in NRC-licensed activities.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of the Order may also subject the person to a civil monetary penalty.

By separate letter being issued today, the NRC is taking enforcement action against Capital Engineering Services, Inc.


In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

David F. Johns, P.E.

- 2 -

Questions concerning these actions should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

Sincerely,


Edward L. Jordan
Deputy Executive Director for Regulatory
Effectiveness, Program Oversight,
Investigations and Enforcement

Enclosure: Order Prohibiting Involvement in NRC-Licensed
Activities (Effective Immediately)

cc w/encls:
State of Delaware

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

David F. Johns, P.E.
Dover, Delaware

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IA 97-026

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

David F. Johns, P.E., is the Owner/President, and Radiation Safety Officer at Capital Engineering Services, Inc. (Licensee), an NRC licensee who is the holder of Byproduct Nuclear Material License No. 07-30056-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of moisture/density gauges containing sealed sources. The License was originally issued on September 14, 1993, and is due to expire on September 30, 1998.

On February 12, 1996, the License was suspended by an NRC Order for nonpayment of fees. However, on May 17, 1996, the NRC issued a Conditional Order Extending Time that granted the Licensee's request to pay the delinquent fees in twelve monthly installment payments and extended the effective date of the February 12, 1996 Order to March 15, 1997. In addition, the Conditional Order stated that, in the event the Licensee fails to pay an installment during the 12-month period, each and every term and condition set forth in the February 12, 1996 Order will become immediately effective without further notice. The Licensee failed to make the first installment due June 15, 1996, after the Conditional Order was issued. Accordingly, on June 16, 1996, the terms of the February 12, 1996 "Order Suspending License" again became effective.

On October 30, 1996, November 19, 1996, February 20, 1997, and March 5, 1997, the NRC conducted an inspection at the Licensee's facility in Dover, Delaware. During the inspection, the inspector determined that the Licensee had continued to use licensed radioactive material after issuance of the NRC Order Suspending the License on February 12, 1996. Specifically, the Licensee used licensed material on numerous occasions between February 12, 1996, and May 16, 1996, before the Conditional Order Extending Time was granted, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3.

Additionally, the Licensee continued to use the gauges on numerous occasions after June 16, 1996, the date on which the Order Suspending License once again became effective because of the licensee's failure to pay the first fee installment required by the May 17, 1996 Order Extending Time, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3.

On October 2, 1996, the NRC issued to the Licensee a letter reiterating that, given the Licensee's failure to abide by the installment plan, the License had been suspended as specified in the February 12, 1996 Order Suspending License. During an NRC inspection on October 30, 1996, the Licensee informed the NRC inspector that it continued to use licensed material because it had not received the October 2, 1996 letter until October 28, 1996.

As a result, the NRC issued a Confirmatory Action Letter (CAL) to the Licensee on November 1, 1996, which confirmed the Licensee's commitments to cease use

and/or receipt of licensed material. The CAL references a telephone conversation between Mr. David Johns, the Licensee's President, and Mr. Frank Costello, NRC Region I, that took place on October 31, 1996, in which Mr. Johns agreed to the terms of the CAL.

Concurrently with NRC inspection, the NRC Office of Investigations (OI) conducted an investigation of these matters. During the investigation, Mr. Johns stated that he did not recall receiving by mail, or being informed of, the February 12, 1996 Order. However, Mr. Johns recalled requesting from the NRC that an installment plan be established for payment of the delinquent inspection and annual fees.

When questioned as to why the Licensee continued to use licensed material after Mr. Johns failed to make the installment due June 15, 1996, Mr. Johns stated that he forgot about the language in the May 17, 1996 Conditional Order (i.e., should the Licensee fail to pay an installment during the 12-month period, each and every term and condition set forth in the February 12, 1996 Order will become immediately effective without further notice).

As to his agreement to the terms of the CAL, Mr. Johns stated that he recalled the October 31, 1996 telephone conversation, but he understood that once he fully paid the outstanding debt, he could use the gauges. Mr. Johns, however, did not pay the outstanding debt¹ and, yet, allowed continued use of licensed material on numerous occasions from October 29 to, at least,

¹ By Check No. 2054 dated November 20, 1996, the Licensee paid \$531.16. However, the check did not clear due to insufficient funds.

November 19, 1996, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3. In addition, based on the OI investigation and inspection findings, the NRC determined that the Licensee failed to test sealed sources for leakage and/or contamination, a violation of License Condition 13.

On April 10, 1997, an enforcement conference was scheduled with the Licensee. However, the Licensee failed to appear for the enforcement conference. In a subsequent telephone conversation between Mr. Johns and Mr. R. Blough, Director, Division of Nuclear Materials Safety, NRC Region I, Mr. Johns indicated that he was not planning to attend the conference. During that telephone conversation, Mr. Johns was also informed that the NRC would proceed with appropriate enforcement action.

III

Based on the above, the NRC has concluded that Mr. Johns engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), by causing the Licensee to be in violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3. This conclusion is: (1) based on the Licensee's continued use of licensed material in violation of NRC requirements despite Mr. Johns receiving numerous written communications that specifically informed him of the License suspension; and (2) supported by the fact that Mr. Johns requested from the NRC that an installment plan be established to remove the suspension of the License; Mr. Johns recalled the October 31, 1996 telephone conversation in which he was specifically informed that the License was suspended and in which he agreed not to use licensed material; and Mr. Johns failed to ensure that

the Licensee paid the outstanding debt before permitting resumption of licensed material use. In addition, as the Licensee's Radiation Safety Officer, Mr. Johns failed to ensure that the Licensee tested sealed sources for leakage and/or contamination, a violation of License Condition 13.

Given Mr. Johns' deliberate misconduct, and Mr. Johns' failure to ensure that the Licensee complied with other NRC requirements, the NRC no longer has the necessary assurance that Mr. Johns, should he engage in NRC-licensed activities under any other NRC license, would perform NRC-licensed activities safely and in accordance with NRC requirements.

Consequently, I lack the requisite reasonable assurance that NRC-licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Johns were permitted at this time to be involved in NRC-licensed activities.

Therefore, the public health, safety and interest require that Mr. Johns be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. Mr. Johns is also required, for a period of three years from the date of this Order, to provide a copy of this Order to any prospective employer who engages in NRC-licensed activities prior to his acceptance of employment involving non-NRC-licensed activities with such prospective employer. Additionally, for

a period of three years following the three-year prohibition, the first time Mr. Johns is employed in NRC-licensed activities, Mr. Johns is required to notify the NRC of his first employment in NRC-licensed activities.

Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Johns conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY:

1. For a period of three years from the date of this Order, Mr. Johns is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.
2. For a period of three years from the date of this Order, Mr. Johns shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as described in Paragraph IV.1 above) prior to his acceptance of employment involving non-NRC-licensed activities with

such prospective employer. The purpose of this requirement is to ensure that the employer is aware of Mr. Johns' prohibition from engaging in NRC-licensed activities.

3. For a period of three years following the three-year prohibition, the first time Mr. Johns is employed in NRC-licensed activities, Mr. Johns shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Mr. Johns must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the

extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Johns or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, to Mr. Johns if the answer or hearing request is by a person other than Mr. Johns. If a person other than Mr. Johns requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).


If a hearing is requested by Mr. Johns or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Johns may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the

Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Edward V. Jordan
Deputy Executive Director for Regulatory
Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 15th day of May 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 28, 1998

IA 98-002

Mr. Thomas C. Johnson
**HOME ADDRESS DELETED
UNDER 2.790**

Dear Mr. Johnson:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) (OI REPORT NO. 1-96-015)**

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you based on the finding by the NRC Office of Investigations (OI) that you intentionally altered the Niagara Mohawk Power Company (NMPC) Fitness for Duty (FFD) computer code to ensure that certain individuals, including yourself, would be excluded from random FFD screening. As such, you violated 10 CFR 50.5(a)(1) which provides, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, order, or any term, condition, or limitation of the license. Specifically, you deliberately caused NMPC to violate 10 CFR Part 26 by your involvement in altering the selection code intended to assure that individuals are selected for FFD testing in a statistically random and unpredictable manner. The synopsis of the OI investigation was forwarded to you on January 8, 1998. You were offered the opportunity to discuss these findings at a predecisional enforcement conference, but you declined such a conference.

The Order prohibits your involvement in NRC-licensed activities for a period of five years from the date of this Order. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

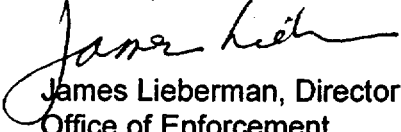
Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741. Also attached is a letter issued on this date to Niagara Mohawk Corporation regarding this matter.

Mr. Thomas C. Johnson

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
(Effective Immediately)
2. Letter to NMPC

ENCLOSURE

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

In the Matter of

IA 98-002

MR. THOMAS C. JOHNSON

**ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)**

I

Mr. Thomas C. Johnson (Mr. Johnson) was formerly employed as a contractor employee at the Niagara Mohawk Power Corporation (NMPC), Nine Mile Point nuclear facility as a computer programmer. NMPC holds Facility License Nos. DPR-63 and NPF-69 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize NMPC to operate the Nine Mile Point facilities, Units 1 and 2, in accordance with the conditions specified therein.

II

In May 1996, NMPC initiated an investigation into whether Mr. Johnson and others were involved in the alteration of a computer code used to select individuals for random drug and alcohol testing. Based on the evidence developed during the NMPC investigation, as well as a subsequent review by the NRC Office of Investigations (OI), OI concluded that Mr. Johnson and another contractor computer programmer intentionally altered the fitness-for-duty (FFD) computer program to ensure that certain individuals (including themselves) would be excluded from random FFD screening. Specifically, a patch had been inserted into the computer program

to ensure certain individuals would not be selected. Moreover, the two individuals planned and executed a scheme (and a number of precautions) to elude detection and prevent tracing. These actions caused NMPC to violate 10 CFR 26.24, which requires that individuals be tested in a statistically random and unpredictable manner. As a result of this violation, Mr. Johnson, the other contractor, and others, were prevented from being selected for random FFD testing.

Although Mr. Johnson, in an interview with NMPC investigators on May 15, 1996, denied knowledge of this matter, during a subsequent interview by NMPC investigators on May 22, 1996, Mr. Johnson admitted that he was involved in a joint effort with another individual in altering the computer program for FFD testing selection. Mr. Johnson was offered an opportunity for an enforcement conference with the NRC, but declined.

III

Based on the above, the NRC has concluded that Mr. Johnson engaged in deliberate misconduct. Mr. Johnson's actions constitute a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In this case, Mr. Johnson caused the Licensee to be in violation of 10 CFR 26.24. Specifically,

10 CFR Part 26.24, requires, in part, that as a means to deter and detect substance abuse, the licensee shall implement a testing program that includes unannounced drug and alcohol testing that is to be imposed in a statistically random and unpredictable

manner so that all persons in the population subject to the testing shall have an equal probability of being selected and tested.

Contrary to the above, at some time prior to May 1996, Mr. Johnson and another contractor computer programmer altered the FFD computer program used to ensure that individuals were tested for drugs and alcohol in a statistically random and unpredictable manner, resulting in certain individuals being excluded from random FFD screening. As a result, for a indeterminate period prior to May 1996, individuals were selected for testing in a manner that was not statistically random and unpredictable.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements. Mr. Johnson's action in altering the FFD program, and his collusion with another individual to hide that alternation, constitute deliberate violations of Commission regulations, and by doing so, raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC Licensees and their contractors in the future, and raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Johnson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Johnson be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, for a period of three years after the five year period of prohibition

has expired, Mr. Johnson is required to notify the NRC of his acceptance of each employment offer involving NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Johnson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Thomas C. Johnson is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
- B. For a period of three years after the five year period of prohibition has expired, Mr. Johnson shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Johnson shall include a statement of

his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Johnson of good cause.

V

In accordance with 10 CFR 2.202, Mr. Johnson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Johnson or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S.

Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Johnson if the answer or hearing request is by a person other than Mr. Johnson. If a person other than Mr. Johnson requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Johnson or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Johnson may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

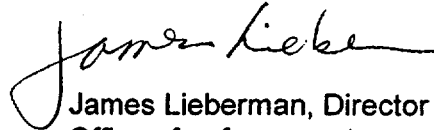
In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the

Enclosure

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extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of enforcement

Dated at Rockville, Maryland
this 28th day of April 1998



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 12, 1995

EA 94-240
IA 95-015
IA 95-016

Midwest Testing, Inc.
ATTN: Mr. William Kimbley, President
Ms. Joan Kimbley, General Manager and
Treasurer
2421 Production Drive
Indianapolis, Indiana 46241

SUBJECT: CONFIRMATORY ORDER AND NOTICE OF TERMINATION OF LICENSE
(OI INVESTIGATION REPORT NO. 3-93-022R)

Dear Mr. and Ms. Kimbley:

The Confirmatory Order (Order) to which you agreed on June 2, 1995, has been executed. A signed copy of the Order is enclosed. In addition, your license has been terminated as of the date of this letter in accordance with the Order Suspending License dated August 26, 1994. Enclosed is a copy of Amendment 1 terminating License No. 030-24866-02. We consider this matter settled.

Under the terms of this Order, for a period of five years beginning June 2, 1995, you, as well as Midwest Testing, Inc. and any successor entity, are prohibited from applying to the NRC for a license, and prohibited from engaging in, or controlling, any NRC-licensed activity. Should you violate the terms of the Order, you may be subject to civil and criminal sanctions under Sections 233 and 234 of the Atomic Energy Act of 1954, as amended.

Questions concerning this Order should be addressed to me at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Lieberman".

James Lieberman, Director
Office of Enforcement

Enclosures: As Stated

Docket No. 030-32827
License No. 13-24866-02

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
MIDWEST TESTING, INC.)	Docket No. 030-32827
Indianapolis, Indiana)	License No. 13-24866-02
)	EA 94-240
MR. WILLIAM G. KIMBLEY)	IA 95-015
)	
MS. JOAN KIMBLEY)	IA 95-016
)	

CONFIRMATORY ORDER

I

Midwest Testing, Inc. (Licensee) is holder of NRC License No. 13-24866-02 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorized the Licensee to possess and use cesium-137 and americium-241 as sealed sources in moisture/density gauges. The License was issued on August 19, 1992, and is being terminated by Amendment No. 1, which is being issued on the date of this Order.

II

On July 27, 1993, a routine inspection of licensed activities was conducted at Midwest Testing, Inc. (Licensee) by NRC Region III. During the inspection the inspector identified that licensee management had allowed workers to operate moisture density gauges without personnel monitoring devices (film badges) and that required leak tests of the gauges had not been performed.

The NRC Office of Investigations (OI) conducted an investigation to determine whether willful violations of NRC requirements had occurred. Based on the NRC inspection and OI investigation, it appears that Mr. William G. Kimbley, owner

of Midwest Testing, deliberately violated NRC requirements by:

- (1) allowing operators to use moisture density gauges without personnel monitoring devices between December 24, 1991, and August 25, 1993, in violation of Condition 18.A of License No. 13-24866-01 (expired on March 31, 1992) and Condition 20.A of License No. 13-24866-02 (issued on August 19, 1992);
- (2) not performing leak tests of two moisture density gauges between August 19, 1992, and July 31, 1993, in violation of Condition 13.A of License No. 13-24866-02;
- (3) not requesting a license amendment to name a new Radiation Protection Officer, in violation of Condition 11 of License No. 13-24866-02, when the individual named on the License left Midwest Testing in October 1993;
- (4) storing licensed material at an unauthorized location since March 1994 in violation of Condition 10 of License No. 13-24866-02 and 10 CFR 30.34(c); and
- (5) allowing moisture density gauges to be used between April 1, 1992, and August 19, 1992, with an expired license in violation of 10 CFR 30.3 and 10 CFR 30.36(c)(1)(i) and (iii).

In addition, it appears that Ms. Joan Kimbley, General Manager and Treasurer of Midwest Testing, Inc., deliberately violated Items (1), (2), and (5) above. These actions appear to have been a result of Midwest Testing, Inc. financial constraints, inexperience of the General Manager and, in general, a lack of appreciation on the part of the Owner and the General Manager of the regulatory significance and consequences of the violations.

A Confirmatory Action Letter was issued to the Licensee on March 21, 1994, confirming that the Licensee would secure its moisture density gauges in locked storage until the Licensee: (1) designated a Radiation Protection Officer, (2) obtained NRC approval via a license amendment for its designated Radiation Protection Officer and its current moisture density gauge storage location, (3) demonstrated that all its moisture density gauges were appropriately tested for leakage, and (4) demonstrated that personnel radiation monitoring devices were provided for those persons designated to use moisture density gauges. The Licensee did not use its moisture density gauges after issuance of the Confirmatory Action Letter.

Subsequently, an Order Suspending License (Effective Immediately) was issued to the Licensee on August 26, 1994, for nonpayment of fees, which required: (1) the Licensee to suspend NRC licensed activities and dispose of its licensed material; and (2) NRC termination of License No. 13-24866-02 following disposal of the licensed material. The Licensee disposed of its licensed material in December 1994. NRC Region III verified that the licensed material was properly transferred to authorized recipients.

A transcribed enforcement conference was conducted between the NRC and the Licensee on March 15, 1995, to discuss the apparent violations, their causes and safety significance. Mr. Kimbley stated during the enforcement conference, "And the question about would we ever pursue an NRC license again, the answer to that is no. If there is any way I can give you assurance of that, I'll be glad to do that." Ms. Kimbley stated during the Enforcement Conference, "Like we stated earlier, we don't intend to continue with any licensed material in the future."

Further, in a telephone conversation on May 2, 1995, with Mr. Paul Pelke, NRC Region III, Mr. and Ms. Kimbley agreed to the provisions and to the issuance of this Order to resolve all matters pending between them. Specifically, Mr. Kimbley agreed, for a period of five years from the date he signs this Confirmatory Order, that Mr. Kimbley, Midwest Testing, Inc., or any successor entity wherein Mr. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Mr. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time. Ms. Kimbley agreed, for a period of five years from the date she signs this Confirmatory Order, that Ms. Kimbley, Midwest Testing, Inc., or any successor entity wherein Ms. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Ms. Kimbley, Midwest Testing, Inc., or a successor entity,

as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

I find that the Licensee's commitments as stated in the May 2, 1995 conversation with Paul Pelke, NRC Region III, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Part 30, IT IS HEREBY ORDERED that:

1. For a period of five years from the date Mr. William G. Kimbley signs this Confirmatory Order, Mr. Kimbley, Midwest Testing, Inc., or any successor entity wherein Mr. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Mr. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

2. For a period of five years from the date Ms. Joan Kimbley signs this Confirmatory Order, Ms. Kimbley, Midwest Testing, Inc., or any successor entity wherein Ms. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Ms. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

3. Mr. Kimbley, Ms. Kimbley, Midwest Testing, Inc., or any successor entity, as described above, waive the right to contest this Order in any manner, including requesting a hearing on this Order.

The Regional Administrator, NRC Region III, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee, Mr. William G. Kimbley, or Ms. Joan Kimbley of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, Mr. William G. Kimbley, and Ms. Joan Kimbley may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and

Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

This Order was consented to:

FOR THE LICENSEE, WILLIAM G. KIMBLY, AND JOAN KIMBLY

BY: William G. Kimbly Dated: 4/02/95
William G. Kimbly

Notary: Beck E. Kimbly
Residence: Hendricks County, Indiana Expires: 6-19-98



BY: Joan Kimbly Dated: 6-2-95
Joan Kimbly

Notary: Beck E. Kimbly Expires: 6-19-98
Residence: Hendricks County, Indiana



FOR THE NUCLEAR REGULATORY COMMISSION

BY: James Lieberman
James Lieberman

Order Dated: June 12, 1995
Rockville, Maryland



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 1, 1999

IA 99-001

Peter Kint
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Inspection Report 030-04837/98001(DNMS) and NRC Office of
Investigations Report 3-98-035)

Dear Mr. Kint:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 (a)(1) of the Commission's regulations, as described in the Order. Your deliberate misconduct caused your employer to be in violation of numerous requirements contained in 10 CFR Part 34. A copy of the OI report synopsis and inspection report was sent to you by letter dated November 19, 1998. In that letter, you were provided with an opportunity to respond to the apparent violation or to request a predecisional enforcement conference. You responded to the apparent violation by letter dated December 31, 1998 and did not request such a conference. The Order prohibits your involvement in NRC-licensed activities for a period of one year and establishes other requirements as stated in the Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who wilfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm R. Knapp".

Dr. Malcolm R. Knapp,
Deputy Executive Director
for Regulatory Effectiveness

Enclosure: Order Prohibiting Involvement in NRC-licensed Activities

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Peter Kint

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IA 99-001

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Mr. Peter Kint (Mr. Kint) was employed as a radiographer by XRI Testing (Licensee) . The Licensee is the holder of License No. 21-05472-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 and last renewed on January 28, 1998. The license authorizes possession and use of sealed sources in the conduct of industrial radiography in accordance with the conditions specified therein.

II

On August 24 through 27, 1998, a special inspection of licensed activities was conducted in response to the Licensee's notification to the NRC on August 21, 1998, of a potential overexposure which had occurred during radiographic operations on August 21, 1998. The inspection disclosed that Mr. Kint was not wearing an alarming ratemeter as required. An investigation of this event was conducted by the NRC Office of Investigations (OI) from August 30 to October 8, 1998.

During the week of August 17, 1998, Mr. Kint and another radiographer conducted radiographic operations at a temporary jobsite in Mishawaka, Indiana. Both individuals were certified in

1995 as radiographers by the State of Illinois and had received instruction in the Licensee's procedures and NRC regulations.

NRC regulations require, in part, that the licensee may not permit any individual to act as radiographer at a temporary jobsite unless at all times during radiographic operations each individual wears on the trunk of the body an alarming ratemeter (10 CFR 34.47).

On August 21, 1998, while at the Mishawaka temporary jobsite, Mr. Kint was exposed to a radiography source (92 curies of iridium-192) when he entered the area of operations and manipulated the collimator. Mr. Kint apparently did not realize that the source was unshielded until he returned to the radiographic exposure device. Mr. Kint was not wearing his alarming ratemeter and he received a radiation dose (shallow dose equivalent) of 20 rems to his extremities (hand). Had he worn the alarm ratemeter as required, Mr. Kint most probably would have been alerted to the unshielded source before receiving the 20 rems shallow dose equivalent. Mr. Kint stated to OI that he intentionally failed to wear his alarm ratemeter on that occasion, stating that he wore it only about 25 percent of the time that it was required to be worn. In addition, (1) Mr. Kint was trained on using the alarm ratemeter; (2) Mr. Kint was provided with an alarming ratemeter which he had with him at the jobsite; and (3) in his September 11, 1998, testimony to the OI investigators, Mr. Kint stated that he deliberately did not wear the alarm ratemeter because it was inconvenient, uncomfortable, and required a belt which he did not normally wear. In addition, Mr. Kint did not perform a radiation survey as required by 10 CFR Section 34.49 or maintain continuous direct visual surveillance of the operation as required by 10 CFR Section 34.51.

Based on the above, the NRC has determined that Mr. Kint, an employee of the Licensee, engaged in deliberate misconduct in violation of 10 CFR 30.10 (a)(1), causing the Licensee to be in violation of 10 CFR 34.47 (a). Specifically, the NRC has concluded that Mr. Kint deliberately failed to wear his alarming ratemeter while conducting radiography at a temporary jobsite during the week of August 17, 1998. As a result of not wearing his alarm ratemeter on August 21, 1998, Mr. Kint received an unnecessary radiation exposure to his hand during an incident when he handled a collimator while the iridium source was in the unshielded position.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to wear appropriate personal radiation monitoring devices during radiographic operations at a temporary jobsite. This deliberate act is significant because Mr. Kint, an experienced radiographer, failed to observe the safeguards designed to protect him from potentially dangerous radiation exposures. In addition, there were violations caused by Mr. Kint which do not appear to be wilful and which include Mr. Kint's failure to perform a radiation survey and failure to maintain direct visual surveillance of the radiographic operations. Mr. Kint's actions during this incident have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Kint were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and

interest require that Mr. Kint be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. If Mr. Kint is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Kint is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, THAT:

1. Mr. Kint is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Mr. Kint is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.
3. For a period of one year after the one year period of prohibition has expired, Mr. Kint shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities as defined in

Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Mr. Kint shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Kint of good cause.

V

In accordance with 10 CFR 2.202, Mr. Kint must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Kint or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear

Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to Mr. Kint if the answer or hearing request is by a person other than Mr. Kint. If a person other than Mr. Kint requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Kint or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time

for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Dated at Rockville, Maryland
this 1st day of March 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 18, 1997

IA 97-011

Mr. Krishna Kumar
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Kumar:

The enclosed Order, effective immediately, is being issued to you as a result of the findings of an NRC inspection conducted on December 2-3, 1993, and an investigation by the NRC Office of Investigations (OI), initiated in 1993 which found that you engaged in deliberate misconduct with respect to NRC-licensed activities while you were President of Power Inspection, Inc.

The enclosed Order prohibits you from engaging in NRC-licensed activities for a period of 10 years. Further, for a period of five years after the ten-year prohibition, the Order also requires you to provide notice to the NRC of any future employment or involvement in NRC-licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to a civil monetary penalty.

In addition, the NRC is issuing a \$40,000 civil penalty to Power Inspection, Inc., (see Enclosure 2) on this date based, in part, on your actions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Mr. Krishna Kumar

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

Sincerely,



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
(Effective Immediately)
2. Notice of Violation and Proposed Imposition of Civil Penalties

cc w/encls:

Commonwealth of Pennsylvania
State of Florida

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Krishna Kumar

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IA 97-011

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Krishna Kumar (Mr. Kumar) was President of Power Inspection, Inc. (PI or Licensee). PI is the holder of Byproduct License No. 37-21428-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes the Licensee to use iridium-192 and cobalt-60 sealed sources for the performance of industrial radiography at its facility in Wexford, Pennsylvania, as well as at temporary job sites. The License was most recently renewed on January 31, 1989, and expired on January 31, 1994. In addition, the Licensee submitted a request, dated December 30, 1993, that the license be terminated. Action on that request has been held in abeyance pending further NRC review.

In addition, PI acted as a vendor supplying services to nuclear power plants, including the performance of nondestructive testing services, such as eddy current testing. Such services were provided to the Perry and Cooper nuclear power plants in 1993.

II

On December 2 and 3, 1993, the NRC performed an inspection at the Licensee's Wexford facility of activities conducted under the License. During the

inspection, the NRC found numerous violations of NRC requirements. The violations included: the failure of the Radiation Safety Officer (RSO) named on the License to perform required duties; the failure to conduct quarterly audits of all radiographers; the failure to provide the required annual refresher training to the radiographers; the failure to perform, at the required frequency, the required inspection and maintenance on the exposure device (camera) containing an iridium-192 source; the failure to perform leak tests of the sealed sources at the required frequency; the failure to promptly collect and submit film badges for processing; and the failure to maintain radiography utilization logs.

Furthermore, the NRC found during the December 1993 inspection that the utilization logs for the iridium-192 source, covering the period of July through November 1993, as well as the utilization logs for the cobalt-60 source, covering the period of July through October 1993, were also unavailable for inspection at the time of the NRC inspection on December 2, 1993.

On December 2, 1993, an NRC investigation was also initiated by the NRC Office of Investigations (OI). During its investigation, OI concluded that:

- a. with respect to the vendor-related activities: (1) false Eddy Current Testing (ET) qualification certifications were deliberately generated by PI for at least three employees who performed ET examinations at Perry and Cooper nuclear power plants during 1993 and false ET qualification certification examination results and Personnel Certification Summaries

were deliberately generated for four employees, and these falsifications were condoned or directed by the former President (i.e., Mr. Kumar), the former Vice President/RSO, and the former Quality Assurance Manager; and (2) three PI employees tested positive for illegal drug use prior to working at Perry and Cooper in 1993, and the former President of PI was aware of this and did not notify Perry and Cooper.

- b. with respect to the materials License: (1) a minimum of 38 source utilization logs (for radiography performed) were falsely created by PI employees to satisfy questions asked during an April 1993 NRC inspection regarding the lack of utilization logs, and this activity was undertaken at the direction of the former President of PI; (2) the former President of PI knowingly failed to notify the NRC of a change of radiation safety officer in approximately August 1993; and (3) responses in PI's letter, dated July 14, 1993, to the NRC, were deliberately incomplete and inaccurate, and the former President and individual identified on PI's NRC license as the RSO were responsible for knowingly providing this false information to the NRC.

The inaccurate information provided to the NRC in the letter dated July 14, 1993, was in response to a previous Notice of Violation issued to the Licensee on June 16, 1993, for numerous violations identified during an inspection conducted in April 1993. One of the violations identified during the April 1993 inspection involved the failure to maintain personnel monitoring records for the radiographers at the facility. In the July response, signed by the former RSO (i.e., the

individual identified on PI's NRC license as the RSO), the Licensee stated that records of such personnel monitoring had been misplaced at the time of the April inspection. In fact, the NRC learned, during the December 2 and 3, 1993 inspection, that Mr. Kumar knew that those records alluded to in the licensee's July 1993 response did not even exist at the time of the April inspection, since the film badges had not been processed until after the April inspection was completed.

III

Based on the above, Mr. Kumar, former President of PI, a contractor to licensees of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2), by deliberately submitting in March and in October 1993 to the Cleveland Electric Illuminating Company (CEIC) and Nebraska Public Power District (NPPD), both licensees of the NRC, ET qualification certification examination results and Personnel Certification Summaries which were inaccurate. Mr. Kumar also violated 10 CFR 30.10(a)(2) by submitting on March 5, 1993, and on October 6, 1993, to each NPPD and CEIC, respectively, three inaccurate letters stating that the trustworthiness and reliability of two individuals had been established by an investigation, when Mr. Kumar knew that the individuals had used illegal substances.

In addition, Mr. Kumar, an employee of PI, a licensee of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), which caused PI to be in violation of 10 CFR 30.9(a) and 10 CFR 34.27. Specifically:

- a. As a result of Mr. Kumar's direction to fabricate source utilization logs, PI violated 10 CFR 30.9(a) and 10 CFR 34.27 by maintaining a minimum of 38 inaccurate logs for radiography performed by PI; and
- b. As a result of Mr. Kumar's direction, PI violated 10 CFR 30.9(a) by providing to the NRC a letter dated July 14, 1993, which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in an NRC Notice of Violation dated June 16, 1993.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Kumar's actions in deliberately violating NRC requirements and in causing the Licensee to be in violation of NRC requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to both the NRC and NRC licensees. Moreover, given Mr. Kumar's indictment on April 28, 1988¹, there is a pattern of record falsification which raises further doubt about Mr. Kumar's integrity and whether he can be relied upon to comply with NRC requirements.

¹ Mr. Kumar and PI were indicted by the United States Attorney in the Western District of Pennsylvania for fraud and false statements in connection with testing that was to be performed at the Duquesne Light Company, a licensee of the NRC. In this case, Mr. Kumar admitted that he directed falsification of eddy current test equipment calibration certifications to save PI time and money, and subsequently provided the false certificates to Duquesne Light Company.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Mr. Kumar, or records required to be maintained by the Licensee, will be complete and accurate in all material respects if Mr. Kumar were permitted to be involved in any NRC-licensed activities. I also lack the requisite assurance that NRC-licensed activities will be conducted safely or in accordance with NRC requirements or that the health and safety of the public will be protected if Mr. Kumar were involved in NRC-licensed activities. In addition, I find that Mr. Kumar is either unable or unwilling to assure that NRC requirements are being and will be followed.

Therefore, I find that the public health, safety, and interest require that Mr. Kumar be prohibited from involvement in NRC-licensed activities for ten years from the date of this Order, and if he is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer. In addition, for a period of five years commencing after the ten-year period of prohibition, Mr. Kumar must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Kumar's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 57, 62, 81, 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 30.10, 50.5, and 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. Krishna Kumar is prohibited for ten years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include the licensed activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction. In addition, if Mr. Kumar is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer.
- B. For a period of five years, after the above ten-year period of prohibition has expired, Mr. Kumar shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In

the first such notification, Mr. Kumar shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement (OE), may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Kumar of good cause.

V

In accordance with 10 CFR 2.202, Mr. Kumar must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order, and shall set forth the matters of fact and law on which Mr. Kumar or other person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Kumar if the answer or hearing request is by a person other than Mr. Kumar. If a person other than Mr. Kumar requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Kumar or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Kumar or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the

extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 17th day of February 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 24, 1999

IA 98-065

Mr. Lee LaRocque
HOME ADDRESS DELETED
UNDER 2.790

Dear Mr. LaRocque:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Office of Investigations Report No. 1-98-026)**

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Order) is being issued to you based on your deliberate and repeated misconduct in violation of 10 C.F.R. § 30.10, "Deliberate misconduct." Specifically, on May 11, 1998, while employed as a Nuclear Medicine Technologist (NMT) at Windham Community Memorial Hospital, you deliberately: (1) altered the dose calibrator reading for an iodine-131 (I-131) capsule, which was to be administered to a patient; (2) administered the capsule containing a dose of I-131 in excess of that authorized by the hospital's NRC license; and (3) created an inaccurate record of that dose, required to be maintained by 10 C.F.R. § 35.53(a) and (c), contrary to 10 C.F.R. § 30.9, "Completeness and accuracy of information." Among other things, the Order prohibits you from engaging in NRC-licensed activities for a period of one year from the date of the Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

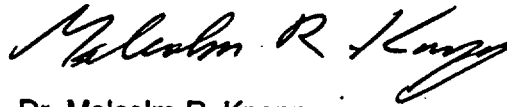
Also enclosed is a letter to Windham Community Memorial Hospital noting that the NRC is exercising enforcement discretion and not taking enforcement action against it for the violations caused by your actions.

Mr. Lee LaRocque

2

In accordance with 10 C.F.R. § 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



Dr. Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

- Enclosures: 1. Order Prohibiting Involvement in NRC-Licensed Activities
2. Letter to Windham Hospital Exercising Enforcement Discretion

cc w/encs:
Allison Breault, Windham Community Memorial Hospital
State of Connecticut

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MR. LEE LAROCQUE

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)

IA 98-065

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Mr. Lee LaRocque (Mr. LaRocque) was the Chief Nuclear Medicine Technologist (CNMT) in the Nuclear Medicine Department (NMD) of Windham Community Memorial Hospital, Inc. (Windham or Licensee), Willimantic, Connecticut, from September 1991 until August 1997, when he was demoted to the position of Nuclear Medicine Technologist (NMT). Mr. LaRocque was employed as an NMT in the NMD at the facility from August 1997 to May 14, 1998, when his employment was terminated. Windham holds Facility License No. 06-15203-01 (License), issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35, which authorizes Windham to use byproduct material for medical use.

II

On May 21, 1998, an investigation was initiated by the NRC Office of Investigations (OI), to determine if Mr. LaRocque, while functioning as the NMT at Windham, administered a dose of iodine-131 (I-131) greater than permitted by the License and created an inaccurate record of the dose. Based upon all the evidence, including an admission by Mr. LaRocque during an interview with OI on October 8, 1998, the NRC concludes that Mr. LaRocque deliberately altered a dose calibrator reading for an I-131 capsule, thereby misleading the Authorized User regarding the assayed dose, administered the capsule to the patient knowing that the dose exceeded the License limits, and deliberately created inaccurate records of the dose

Specifically, on the morning of May 11, 1998, when a patient arrived at Windham to be given a dose of 29.5 millicuries of I-131 in capsule form, Mr. LaRocque assayed the dose and found that it contained more than 30 millicuries (mCi) activity. The License limits doses administered to patients to 30 mCi of I-131. As a result, the patient was instructed to return to the hospital at 4:30 p.m., the time at which the dose was expected to have decayed to the prescribed dose.

When the patient returned to the hospital at about 4:15 p.m., Mr. LaRocque measured the dose and found that it was slightly greater than 30 mCi. Rather than waiting until 4:30 p.m., Mr. LaRocque retrieved two lead strips from a nearby closet and inserted them into the dose calibrator in order to lower the reading. With the lead strips inside the dose calibrator, the dose measured 29.2 mCi. Mr. LaRocque then informed the AU that the dose was ready for administration to the patient. Pursuant to the Licensee's Quality Management Program, the AU is required to observe the dose calibrator display before the dose is actually given to the patient. At the request of Mr. LaRocque, the AU observed the dose calibrator readout and approved administration of the dose to the patient. Mr. LaRocque then administered the dose.

Mr. LaRocque also completed a radiopharmaceutical written directive and patient verification form stating that the assayed dose was 29.2 mCi. This record is required to be maintained by the Licensee by 10 C.F.R. § 35.53(a) and (c). In his interview with OI, Mr. LaRocque admitted that he knowingly misled the AU as to the activity of the dose, and knowingly created inaccurate Licensee records, which stated that the assayed dose and the dose administered to the patient

was 29.2 mCi, when Mr. LaRocque knew that the dose was in fact slightly greater than 30 mCi and that the License prohibited the administration of I-131 in doses greater than 30 mCi to patients.

Mr. LaRocque's actions are of particular concern given that on December 10, 1997, only six months before the above-described deliberate misconduct occurred, the NRC had issued a letter to him, explaining that any future deliberate misconduct could subject him to significant enforcement action. Previously, when Mr. LaRocque was the Chief NMT at Windham: (1) after the fact and without first-hand knowledge, he created inaccurate records associated with the disposal of technetium-99m labeled DTPA aerosol kits; and (2) he failed to promptly report that dose calibrator constancy records had been falsified by another NMT. The NRC issued a Notice of Violation to Windham on February 6, 1998, based, in part, on Mr. LaRocque's deliberate misconduct while employed as the Chief NMT.

In a telephone call on December 23, 1998, the NRC discussed its conclusions with Mr. LaRocque and offered Mr. LaRocque an opportunity to attend a predecisional enforcement conference. Mr. LaRocque declined the opportunity, noting that he did not believe he could provide any additional information from what he had already provided to OI. In a letter to Mr. LaRocque dated January 11, 1999, the NRC confirmed that he had declined the opportunity for a conference and offered Mr. LaRocque a second opportunity to attend a conference. Mr. LaRocque did not request a conference.

Based on the above, Mr. LaRocque engaged in deliberate misconduct in that: (1) in violation of 10 C.F.R. § 30.10(a)(1), he deliberately administered a dose of I-131 to a patient in excess of the 30 mCi limit of Condition 15 the License, thereby putting the Licensee in violation of its License; and (2) in violation of 10 C.F.R. §30.10(a)(2), he deliberately created materially inaccurate Licensee dose records, required to be maintained by 10 C.F.R. § 35.53(a) and (c), thereby causing the Licensee to be in violation of 10 C.F.R. § 30.9(a).

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide and maintain information that is complete and accurate in all material respects. Mr. LaRocque's action in causing the Licensee to violate its License and the Commission's regulations, his misrepresentations to the Licensee, and his prior actions as set forth in Section II of this Order, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements, and to provide complete and accurate information to the NRC and its Licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. LaRocque were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. LaRocque be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. If Mr. LaRocque is involved in NRC-licensed activities on the effective date of the Order, Mr. LaRocque must immediately cease such activities, and inform the NRC of the name, address, and telephone number of the employer.

and provide a copy of this Order to the employer. Additionally, Mr. LaRocque is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202, 10 C.F.R. § 30.10, and 10 C.F.R. §150.20, IT IS HEREBY ORDERED THAT:

1. Mr. Lee LaRocque is prohibited for one year from the effective date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 C.F.R. § 150.20.
2. If, on the effective date of this Order, Mr. LaRocque is involved in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this Order to the employer.
3. For a period of one year after the one-year period of prohibition has expired, Mr. LaRocque shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement

U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. LaRocque shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. LaRocque of good cause.

V

In accordance with 10 C.F.R. § 2.202, Mr. LaRocque must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. LaRocque or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement. U S

Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. LaRocque if the answer or hearing request is by a person other than Mr. LaRocque. If a person other than Mr. LaRocque requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. § 2.714(d).

If a hearing is requested by Mr. LaRocque or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Dr. Malcolm R. Knapp
Deputy Executive Director for Regulatory
Effectiveness

Dated at Rockville, Maryland
this 24 day of February 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 12, 1996

IA 96-100

Mr. John Maas
c/o Mr. Paul M. Sandler, Esq.
Freishtat & Sandler
201 East Baltimore Street
Suite 1500
Baltimore, Maryland 21202

**SUBJECT: CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)**

Dear Mr. Maas:

The enclosed Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 of the Commission's regulations, as described in the Order. The Confirmatory Order which you consented to by letter dated October 22, 1996 from your counsel, prohibits your involvement in NRC-licensed activities for a period of five years and requires notification to the NRC of your first involvement in NRC-licensed activities within a period of five years following the prohibition period.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to me at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Lieberman".

James Lieberman
Office of Enforcement

Enclosure: Confirmatory Order Prohibiting Involvement
in NRC-licensed Activities

cc w/encl:
Commonwealth of Puerto Rico

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

John Maas

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)
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IA 96-100

CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. John Maas was employed as President of National Circuits Caribe, Inc. (NCCI) in Fajardo, Puerto Rico, in 1991. NCCI possessed and used radioactive materials at its Fajardo, Puerto Rico facility under the authority of a general license issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 31.5. The general license authorized the licensee to use byproduct material contained in devices designed and manufactured for the purpose of gauging or controlling thickness of materials during industrial processes. NCCI filed for bankruptcy under Chapter 11 in Puerto Rico in March 1991 but the case was dismissed in October 1991 due to lack of response from the company. The Fajardo facility was abandoned sometime around October 1991.

II

On June 23, 1993, the NRC was notified by the Commonwealth of Puerto Rico's Bureau of Radiological Health (Bureau) of the discovery of radioactive sources and a quantity of hazardous chemicals on property leased from the Puerto Rico Industrial Development Corporation (PRIDCO) by NCCI. Bureau personnel indicated that the abandoned sources had been found in an abandoned building by PRIDCO personnel.

The NRC, Region II, staff performed an inspection of the site on June 30, 1993, and determined there were five sources containing microcurie amounts of Thallium-204 or Promethium-147. The sources were in backscatter gauges that were authorized for use by NCCI under an NRC general license, specified in 10 CFR 31.5. The staff determined that the source/gauges had been abandoned at the site since October 1991. NRC and PRIDCO oversaw the disposal of the gauges, which was completed in September 1994.

The NRC Office of Investigations (OI) conducted an investigation, documented in OI Report No. 2-93-044 dated January 31, 1996, to determine whether NCCI had deliberately abandoned licensed material at the plant site. Based on the evidence developed and reviewed, OI determined that during approximately October 1991, the five generally licensed backscatter gauges were deliberately abandoned by the licensee, with the knowledge of the President of the company, Mr. Maas.

Mr. Maas, the former President of NCCI, was prosecuted by the Department of Justice and on December 5, 1995, pled guilty to the charges of 1) willfully and knowingly storing or causing to be stored hazardous wastes for longer than ninety days without having first obtained a permit or interim status for said storage, in violation of Title 42, United States Code, Section 6928(d)(2)(a) and 2) willfully and knowingly abandoning devices containing byproduct radioactive materials, in violation of Section 223 of the Atomic Energy Act of 1954, as amended, Title 42, United States Code, Section 2273 and 10 CFR 31.5(c)(6). On August 8, 1996, Mr. Maas was sentenced to probation and required to perform community service.

III

The Commission's regulation in 10 CFR 30.10 requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation issued by the Commission. Based on the facts set forth above, the staff concluded that Mr. Maas engaged in deliberate misconduct that caused the licensee to abandon devices containing byproduct material in violation of 10 CFR 31.5(c)(6). As President of NCCI, Mr. Maas was responsible for ensuring that NCCI conducted activities in accordance with NRC requirements. The NRC must be able to rely on licensees and their officials and employees to comply with NRC requirements. Mr. Maas' actions in causing NCCI to violate 10 CFR 31.5 have raised serious doubts as to whether he can be relied on to comply with NRC requirements.

The NRC staff sent a letter dated October 10, 1996, to Mr. P. M. Sandler, Mr. Maas' attorney, containing the proposed terms of this Order which are set out in Section IV of this Order. The proposed terms are that Mr. Maas be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and is required to notify the NRC of his first involvement in NRC-licensed activities during the five years following the prohibition period. The NRC staff requested Mr. Sandler to review the proposed items with Mr. Maas and, if Mr. Maas agreed to the proposed terms of this Order, have him indicate his agreement with those terms by signing an enclosed acknowledgement. By letter dated October 22, 1996, Mr. Sandler transmitted the acknowledgement of the proposed provisions of the Order which had been signed by Mr. Maas. In the acknowledgement, Mr. Maas

indicated that he understood the proposed provisions, committed to complying with them, and consented to the issuance of an Order confirming these provisions. In the acknowledgment, Mr. Maas also waived his right to have a hearing on such an Order.

I find that Mr. Maas' commitments as set forth in the letter of October 22, 1996, are acceptable and necessary and conclude that with these commitments public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Maas' commitments in the October 22, 1996 letter be confirmed by this Order. As stated above, Mr. Maas has agreed to this action. Pursuant to 10 CFR 2.202, I have also determined, based on Mr. Maas' consent and on the significance of the conduct described above, that public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. For a period of five years from the date of this Confirmatory Order, Mr. Maas is prohibited from engaging in or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or

general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

2. At least five days prior to the first time that Mr. Maas engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition in Section IV.1 above, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Mr. Maas understands NRC requirements, that he is committed to compliance with NRC requirements, and that provides a basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Regional Administrator, Region II, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Maas of good cause.


In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than Mr. Maas, may submit an answer to this Order, and may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The request for a hearing shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which any other person adversely affected relies and the reasons as to why the Confirmatory Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323 and to Mr. Maas. If a person other than Mr. Maas requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any

hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 12th day of December 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 22, 1999

IA 99-047

Mr. Jasen Mallahan
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC Office of Investigations Report 4-1999-016)

Dear Mr. Mallahan:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate misconduct in violation of 10 CFR 30.10(a)(1) of the Commission's regulations. Specifically, you failed to supervise a radiographer's assistant during radiographic operations and you violated the two-person rule when you elected to develop film during radiographic exposures. Your deliberate misconduct caused your employer, Professional Service Industries, Inc., an NRC licensee, to be in violation of 10 CFR Part 34 requirements. An incident review summary was sent to you by letter dated August 5, 1999. In that letter, you were provided with an opportunity to respond to the apparent violations and/or request a predecisional enforcement conference. We have received no response from you as of the date of this letter. The Order prohibits your involvement in NRC-licensed activities for a period of one year from its effective date and establishes other requirements as stated in the Order. A copy of the NRC Office of Investigations report synopsis is also enclosed.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who wilfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Questions concerning the Order may be addressed to R. W. Borchardt, Director, Office of Enforcement. Mr. Borchardt can be reached at telephone number (301) 415-2741. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, and its enclosures will be placed in the NRC Public Document Room.

Additionally, all final NRC documents, including the final OI investigation report, are official agency records, and may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of information in accordance with the FOIA.

Sincerely,



Carl J. Paperiello,
Deputy Executive Director
for Materials, Research and State Programs

Enclosures: 1. Order Prohibiting Involvement in NRC-Licensed Activities
2. OI Report Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Jasen Mallahan

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IA 99-047

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Jasen Mallahan (Mr. Mallahan) was employed as a radiographer by Professional Service Industries, Inc. (PSI or Licensee). The Licensee is the holder of License No. 12-16941-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on September 13, 1995. The license authorizes possession and use of sealed sources in the conduct of industrial radiography in accordance with the conditions specified therein.

II

On April 6, 1999, an investigation was initiated by the NRC Office of Investigations (OI) to determine if a radiographer and a radiographer's assistant, employees of an NRC licensee, deliberately violated NRC requirements at a jobsite in Pocatello, Idaho. Mr. Mallahan and a radiographer's assistant conducted radiographic operations at a plant in Idaho during the evening of September 14 and early morning of September 15, 1998. A radiography camera containing a sealed source of about 60 curies of cobalt-60 was being used to complete panoramic radiographic testing of a large steel tank. The tank had four welded seams and

each one required a one-hour shot and about 36 pieces of film. After the last shot, two plant employees breached the boundary set by the PSI workers. The plant employees became concerned that they may have received radiation exposures. However, it was determined that the source had been returned to its shielded position and locked prior to the employees' entry into the barricaded area. Therefore, the individuals did not receive a radiation exposure. As a result of this incident, OI determined that several violations of NRC requirements occurred during the third and fourth radiographic shots and that two violations occurred because of the deliberate actions of Mr. Mallahan. The violations include failure to supervise the radiographer's assistant (10 CFR 34.46) and to follow the two-person rule (10 CFR 34.41). Specifically, after the third one-hour shot was started, Mr. Mallahan began developing film in the dark room, leaving the assistant alone to maintain constant surveillance of the barricaded area. At the conclusion of the shot, Mr. Mallahan came out of the dark room and retracted the source into the device. After the fourth shot was started, Mr. Mallahan returned to the dark room, as before, leaving the assistant to maintain constant surveillance of the barricaded area. Upon completion of the 4th shot, Mr. Mallahan remained in the dark room and the assistant retracted the source, completed surveys of the device and guide tube, locked the device, and removed the key. According to the interview with OI, Mr. Mallahan acknowledged receiving radiation safety training which included the requirement for two-person surveillance during the conduct of radiographic operations. He further acknowledged receiving training on the prohibition of allowing a radiographer's assistant to conduct radiographic operations without direct supervision of a radiographer.

Based on the above, the NRC has determined that Mr. Mallahan, an employee of the Licensee, engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of 10 CFR 34.41(a) and 34.46. Specifically, the NRC has concluded that Mr. Mallahan deliberately failed to observe the two-person rule and failed to supervise a radiographer's assistant at a temporary jobsite on September 14 and 15, 1998. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. This deliberate act is significant because Mr. Mallahan, an experienced radiographer, failed to observe the safeguards designed to protect him and others from potentially dangerous radiation exposures. Mr. Mallahan's actions during this incident have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Mallahan were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Mr. Mallahan be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. If Mr. Mallahan is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally for a period of one year after the one year period of prohibition has expired, Mr. Mallahan is required to notify the NRC of his first

employment in NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Mallahan's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Mallahan is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Mr. Mallahan is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.
3. For a period of one year after the one year period of prohibition has expired, Mr. Mallahan shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities as defined in

Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Mr. Mallahan shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Mallahan of good cause.

V

In accordance with 10 CFR 2.202, Mr. Mallahan must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Mallahan or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear

Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to Mr. Mallahan if the answer or hearing request is by a person other than Mr. Mallahan. If a person other than Mr. Mallahan requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Mallahan or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mallahan may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time

for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Carl J. Paperiello
Deputy Executive Director
for Materials, Research and State Programs

Dated this nd 22 day of October 1999
Rockville, Maryland



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

February 23, 1998

IA 97-067

Mr. Julian H. McGriff
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)**

Dear Mr. McGriff:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate misconduct in violation of 10 CFR 50.5 of the Commission's regulations. Specifically, during the period of April 1996 through January 1997, you failed to perform required inventories of emergency equipment at Southern Nuclear Operating Company, Inc.'s (SNC) Farley Nuclear Plant and deliberately falsified equipment checklists that SNC and the Nuclear Regulatory Commission (NRC) relied upon to determine the availability and status of required emergency equipment. Based on your actions, the Order prohibits your involvement in NRC-licensed activities for a period of three years and requires your notification of the NRC of your first involvement in NRC-licensed activities for one year following the prohibition period.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that Section. Violation of this Order may also subject the person to a civil monetary penalty.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, any response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Sincerely,



Ashok C. Thadani
Acting Deputy Executive Director
for Regulatory Effectiveness

Enclosure: Order Prohibiting Involvement
in NRC Licensed Activities

cc w/encl [HOME ADDRESS DELETED]:

Southern Nuclear Operating Company, Inc.
ATTN: Mr. D. N. Morey
Vice President
P. O. Box 1295
Birmingham, AL 35201

D. Lewis Terry, Jr., Esquire
Farmer, Price, Hornsby & Weatherford, L.L.P.
115 West Adams Street
Dothan, Alabama 36303

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Julian H. McGriff

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IA 97-067

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

During the period of April 1996 through March 5, 1997, Julian H. McGriff was employed by Southern Nuclear Operating Company, Inc. (SNC or licensee) at its Joseph M. Farley Nuclear Plant as an Emergency Preparedness Technician. SNC holds License Nos. NPF-2 and NPF-8 for Joseph M. Farley Nuclear Plant Units 1 and 2 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on June 25, 1977, and March 31, 1981, respectively. The licenses authorize SNC to operate the Joseph M. Farley Nuclear Plant (FNP or licensee) Units 1 and 2 in accordance with the conditions specified therein.

II

During an audit conducted by the licensee for the period November 25, 1996, through February 19, 1997, an inconsistency was identified relating to the documentation associated with the monthly check of a self-contained breathing apparatus (SCBA) on the 83 foot elevation of the FNP Unit 2 Auxiliary Building. The monthly check was required by Procedure FNP-0-EIP 16, Emergency Equipment and Supplies, Revision 31. Subsequently, the licensee performed a

more in-depth investigation and determined that a December 17, 1996 inspection, documented by Mr. Julian H. McGriff, had not been conducted. The licensee identified approximately 36 additional discrepancies in the documentation associated with Mr. McGriff's inspections of emergency equipment. Specifically, the licensee identified instances where inventory checklists were completed on dates different from the date the inspections were actually conducted, the deliberate misdating of checklists, and the completion of checklists for inspections never conducted. Mr. McGriff was terminated from employment with SNC on March 5, 1997.

On June 30, 1997, the NRC Office of Investigations (OI) completed an investigation of the alleged falsification of emergency preparedness checklists by Mr. McGriff. OI, in Report No. 2-97-005, concluded that during the period April 1996 through January 1997, Mr. McGriff failed to conduct at least three required inspections and deliberately falsified at least four checklists. The finding was based on the fact that inventory checklist documentation did not coincide with plant access records for Mr. McGriff, which indicated that entries were not made into the documented areas on the dates indicated on the checklists. Specifically, based on plant access data, the following checklist entries were falsified: (1) a December 17, 1996, entry for an inspection of the SCBA on the 83 foot elevation of the FNP Unit 2 Auxiliary Building that was documented but not performed; (2) a July 12, 1996, entry for an inspection of the SCBA in the Diesel Generator Building that was not performed; (3) an entry for an inspection of emergency supplies located in the Auxiliary Building that was intentionally documented as being performed on September 4, 1996, due to admonitions from Mr. McGriff's supervisor regarding the timeliness of inventory checks, when it was actually performed on September 30, 1996; and (4) a

September 30, 1996, entry for an inspection of SCBAs in the Diesel Generator Building that was never performed. Numerous other instances where documentation did not coincide with plant access records for Mr. McGriff were also identified.

FNP Technical Specification (TS) 6.8.1.e requires that written procedures be established and implemented for Emergency Plan implementation. Emergency Plan Implementing Procedure FNP-O-EIP-16.0, Emergency Equipment and Supplies, Revision 31 requires periodic inventory verification of emergency equipment and supplies. Records associated with FNP-0-EIP-016, a safety related procedure at Farley, are required to be maintained in accordance with Section 17.2 of the licensee's 10 CFR Appendix B required Quality Assurance Operations Manual, Revision 32. The checklists, that are to be completed pursuant to FNP-0-EIP-016, are required to be maintained for the lifetime of the plant in accordance with Section 8.7 of licensee procedure FNP-0-AP-4, Control of Plant Records, Revision 18. FNP-0-AP-4 implements item 1.h of Appendix A to Regulatory Guide 1.33, dated 1978, and is required to be established, implemented and maintained in accordance with TS 6.8.1.a. The failure to perform the emergency equipment inventories as prescribed by FNP procedures is a violation of TS 6.8.1.e. In addition, 10 CFR 50.9(a) states, in part, that information required by the Commission's regulations to be maintained by the licensee shall be complete and accurate in all material respects. The failure of SNC to maintain complete and accurate records of emergency equipment inspections due to Mr. McGriff's falsification of inventory checklists is a violation of 10 CFR 50.9(a). The inaccuracy of these records is material because the licensee and the NRC relied upon them to determine the availability and status of emergency equipment.

On August 22, 1997, the NRC sent a letter to Mr. McGriff advising him that his actions appeared to be in violation of 10 CFR 50.5, "Deliberate Misconduct." 10 CFR 50.5, in part, prohibits an employee of a licensee from (1) engaging in deliberate misconduct that causes a licensee to be in violation of any rule or regulation or license condition or limitation of any license issued by the Commission; or (2) deliberately submitting to a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Mr. McGriff was offered the opportunity to either attend a predecisional enforcement conference or respond to the apparent violation in writing. After being granted an extension, Mr. D. Lewis Terry, Esquire, on behalf of Mr. McGriff, responded by letter dated October 28, 1997, to the apparent violation admitting that several of the inspections for which Mr. McGriff was responsible were not conducted and explaining the various discrepancies in Mr. McGriff's documentation of the inventories. The explanation of the discrepancies did not refute the violations, but merely provided Mr. McGriff's rationale for why he chose not to perform the required emergency equipment inventories and why documentation of inventories did not match his plant access records. Notwithstanding this explanation, the result was that records indicated completed inventories which were not performed on the dates specified. Mr. McGriff made no attempt to indicate to either his supervisor or document that he was not completing the records at the time of the inspections. In addition, he failed to annotate records to explain his assumptions and expectations rather than perform certain required emergency equipment inventories based on visual observation.

III

Based on the above, it appears that Mr. McGriff engaged in deliberate misconduct when he failed to perform certain required inspections of emergency equipment and deliberately falsified

inventory checklists that SNC and the NRC relied upon to determine the availability and status of emergency equipment. Mr. McGriff's deliberate misconduct caused the licensee to be in violation of FNP TS 6.8.1.e and 10 CFR 50.9(a) and is, therefore, a violation of 10 CFR 50.5(a)(1) and (2). The NRC must be able to rely on licensees and their employees to fully comply with NRC requirements, including plant procedural requirements which ensure the availability and operability of equipment used in emergency situations and requirements to maintain records that are complete and accurate in all material respects. Mr. McGriff's deliberate misconduct, that caused the licensee to violate TS 6.8.1.e and 10 CFR 50.9(a), raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that public health and safety will be protected if Mr. McGriff were permitted to be involved in NRC-licensed activities at this time.

Therefore, public health, safety and interest require that Mr. McGriff be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of his dismissal from SNC, March 5, 1997, and, if he is currently involved with another licensee in performing NRC-licensed activities, he must immediately cease such activities and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. McGriff is required to notify the NRC of his first employment in NRC-licensed activities for one year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. McGriff's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. Julian H. McGriff is prohibited until March 5, 2000, from engaging in or exercising control over individuals engaged in NRC-licensed activities. If Mr. McGriff is currently involved in NRC- licensed activities, he must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
- B. For a period of one year following the period of prohibition set forth in Paragraph IV.A above, Mr. Julian H. McGriff shall, within 20 days of his acceptance of his first employment offer involving NRC-licensed activities as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon demonstration by Mr. McGriff of good cause.

V

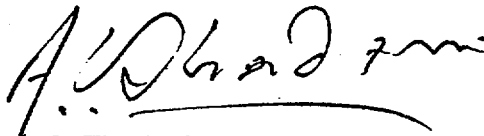
In accordance with 10 CFR 2.202, Mr. McGriff must submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. McGriff relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia 30303 and to Mr. McGriff if the answer or hearing request is by a person other than Mr. McGriff. If a person other than Mr. McGriff requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. McGriff, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. McGriff may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. **AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.**

FOR THE NUCLEAR REGULATORY COMMISSION



Ashok C. Thadani
Acting Deputy Executive Director for
Regulatory Effectiveness

Dated at Rockville, Maryland
this 23 day of February 1998



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 18, 1998

IA 98-047

David Milas
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

Dear Mr. Milas:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC LICENSED ACTIVITIES
(OI REPORT NOS. 3-96-036 AND 3-96-036S)**

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Order) refers to an investigation conducted by the NRC Office of Investigations (OI) (OI Report Nos. 3-96-036 and 3-96-036) concerning your alleged involvement on June 29, 1996, in the apparent compromise of an NRC examination which was to be administered to applicants for NRC reactor operator licenses at the Commonwealth Edison Company's (ComEd) Dresden Station. The OI investigation found that you, an applicant for a reactor operator (RO) license, and another applicant, obtained and photocopied the NRC examination to be administered to your class of license applicants on July 8, 1996. OI coordinated the results of the investigation with the U.S. Attorney's Office, Chicago, Illinois. As a result, you were convicted on May 14, 1998, in the U.S. District Court, Northern District of Illinois, "for compromising the integrity of the [NRC] written examination." One of the items in your Plea Agreement was, "... defendant also agrees to never reapply for a position as a reactor operator with any facility under the jurisdiction, administration, or control of the NRC . . ."

Based on the OI investigation and your criminal conviction, the NRC has concluded that you violated the NRC's rules prohibiting deliberate misconduct at nuclear power facilities and the compromise of the integrity of NRC examinations. Specifically, 10 CFR 50.5(a)(1), "Deliberate Misconduct," prohibits any employee of an NRC licensee (ComEd) from engaging in deliberate misconduct that causes or, but for detection would have caused, a licensee to be in violation of any rule or regulation issued by the Commission. In this case, you caused ComEd and yourself to be in violation of 10 CFR 55.49, "Integrity of Examinations and Tests." 10 CFR 55.49 prohibits applicants and facility licensees (ComEd) from engaging in any activity that compromises the integrity of any test or examination required by 10 CFR Part 55, "Operator's Licenses."

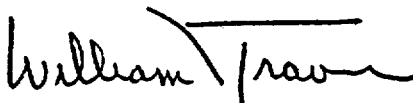
The NRC recognizes that your Plea Agreement prevents you from applying for a position as a reactor operator. However, your Plea Agreement does not prohibit you from participating in other NRC-licensed activities. Therefore, the NRC is issuing the enclosed Order prohibiting your involvement in all NRC-licensed activities for a period of five years. If you are involved with another licensee involved in NRC-licensed activities on the effective date of the enclosed Order, you must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of the enclosed Order to the employer. In addition, for a period of five years after the five-year period of prohibition has expired, the Order requires you to notify the NRC the first time you accept employment involving

NRC-licensed activities or your becoming involved in NRC-licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741. Also attached is the Notice of Violation issued to ComEd for the compromise of the NRC examination that was based, in part, on your deliberate actions.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



William D. Travers
Deputy Executive Director for
Regulatory Effectiveness

Enclosures: 1. Order Prohibiting Involvement in NRC-Licensed Activities
2. Notice of Violation to ComEd
3. Synopsis of OI Report

cc: w/encl 1 (WITH HOME ADDRESS REMOVED):
Oliver D. Kingsley, President, ComEd Nuclear
Generation Group

cc: w/encls 1-3 (WITH HOME ADDRESS REMOVED):
Rene Muliken, U.S. Probation and Parole

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MR. DAVID MILAS

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)

IA 98-047

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Mr. David Milas (Mr. Milas) was formerly employed by the Commonwealth Edison Company (ComEd or Licensee) at the Dresden Nuclear Station (Dresden or facility) and was an applicant for a reactor operator's (RO) license at that facility. ComEd is the holder of License Nos. DPR-19 and DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize ComEd to operate Dresden Units 2 and 3 in accordance with the conditions specified therein.

II

On July 1, 1996, officials at Dresden notified the Commission that the NRC examination for reactor operator licenses, due to be administered at Dresden on July 8, 1996, appeared to have been compromised, as portions of that examination had been found in a copy machine. The NRC Office of Investigations (OI) immediately began an investigation into this matter. The OI investigation indicated that the NRC examination was compromised and originally identified only one individual that was involved, an applicant for an NRC senior reactor operator's (SRO) licensee. Upon further investigation, OI also identified Mr. Milas, an applicant for an NRC RO license, as being directly involved with the compromise of the NRC examination.

The OI investigation found that on June 29, 1996, Mr. Milas and the SRO license applicant were studying for their respective examinations in the Dresden Training Building. During that day, they entered the unlocked office of the Dresden licensing instructors to look for written evaluations that their instructors had made of them. According to both individuals, instructors had previously informed their class that study materials could be found in the instructors' office, and the instructors had indicated where the keys could be found for locked cabinets and desks in their office. The two individuals obtained the necessary keys in the instructors' office, unlocked desks and cabinets, and found the NRC operator licensing examination. The SRO applicant photocopied the NRC examination, while Mr. Milas posted himself at a window to watch for anyone entering the training building.

OI also determined that Mr. Milas returned to the same photocopy machine on June 30, 1996, and made another copy of the examination from the copy he had obtained on June 29, 1996.

The OI investigators coordinated the results of their investigation with the U.S. Attorney, Chicago, Illinois, and Mr. Milas was subsequently prosecuted for compromising the NRC examination. On May 14, 1998, Mr. Milas pleaded guilty in the United States District Court for the Northern District of Illinois to a criminal charge involving the compromise of a written examination for NRC reactor operators' licenses. As a part of his guilty plea, Mr. Milas agreed to never reapply for a position as a reactor operator at any facility under the jurisdiction, administration, or control of the NRC.

III

The NRC must be able to rely on a facility licensee and its employees to comply with all NRC rules and regulations. Based on the OI investigation and the criminal conviction, the NRC has

concluded that Mr. Milas violated the NRC's rules prohibiting deliberate misconduct at nuclear power facilities and the compromise of the integrity of NRC examinations. Specifically, 10 CFR 50.5(a)(1), "Deliberate Misconduct," prohibits any employee of an NRC licensee (ComEd) from engaging in deliberate misconduct that causes or, but for detection would have caused, a licensee to be in violation of any rule or regulation issued by the Commission. Additionally, 10 CFR 55.49, "Integrity of Examinations and Tests," provides in part that applicants for NRC RO and SRO licenses and facility licensees (ComEd) shall not engage in any activity that compromises the integrity of any test or examination required by 10 CFR Part 55, "Operator's Licenses." The NRC has concluded that Mr. Milas' actions constituted deliberate misconduct and also constituted a deliberate violation of 10 CFR 55.49. Mr. Milas' deliberate actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to refrain from deliberately violating NRC rules and regulations.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Milas were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety, and interest require that Mr. Milas be prohibited from any involvement in NRC-licensed activities for a period of five years from the effective date of this Order. If Mr. Milas is involved with another licensee in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Milas is required to notify the NRC of his first employment in NRC-licensed activities in the five years following the prohibition period.

Accordingly, pursuant to sections 57, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. David Milas is prohibited for five years from the effective date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Mr. Milas is involved with another licensee in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.
3. For a period of five years after the five-year period of prohibition has expired, Mr. Milas shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed

activities. In the first notification, Mr. Milas shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Milas of good cause.

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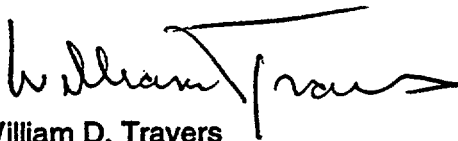
In accordance with 10 CFR 2.202, David Milas must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Milas or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to Mr. Milas, if the answer or hearing request is by a person other than Mr. Milas. If a person other than Mr. Milas

requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Milas or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



William D. Travers
Deputy Executive Director for
Regulatory Effectiveness

Dated at Rockville, Maryland
this 18th day of September 1998

Enclosure: Judgement in a Criminal
Case and Plea Agreement

SYNOPSIS

This supplemental investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations, Region III (RIII), on October 16, 1997, regarding an allegation that a Dresden Nuclear Power Station (Dresden) bargaining unit employee (Reactor Operator (RO) candidate) deliberately assisted a management employee (Senior Reactor Operator (SRO) candidate) in compromising both the NRC RO and SRO examinations at Dresden on June 29 and 30, 1996.

Based upon the evidence developed during the investigation, it is concluded that the bargaining unit employee (RO candidate) at Dresden deliberately assisted the management employee (SRO candidate) in compromising both the NRC RO and SRO examinations.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 18, 1997

IA 97-012

Mr. James Mulkey
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Mulkey:

The enclosed Order, effective immediately, is being issued to you as a result of the findings of an NRC inspection conducted on December 2-3, 1993, and an investigation by the NRC Office of Investigations (OI), initiated in 1993 which found that you engaged in deliberate misconduct with respect to NRC-licensed activities while you were Vice President and Radiation Safety Officer of Power Inspection, Inc., (PI).

The Order prohibits you for five years from any involvement in NRC-licensed activities, and afterwards, requires that you notify the NRC the first time that you engage in NRC-licensed activities. Further, the Order requires you to provide a written answer within 20 days.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to a civil monetary penalty.

In addition, the NRC is issuing a \$40,000 civil penalty to PI (see Enclosure 2) on this date based, in part, on your actions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Mr. James Mulkey

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

Sincerely,



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
(Effective Immediately)
2. Notice of Violation and Proposed Imposition of Civil Penalties

cc w/encls:
Commonwealth of Pennsylvania
State of Florida

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
James L. Mulkey

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IA 97-012

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

James L. Mulkey (Mr. Mulkey) was employed as Vice President by Power Inspection, Inc. (PI or Licensee), and was identified on PI's NRC license as the Radiation Safety Officer (RSO) for PI. PI is the holder of Byproduct License No. 37-21428-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes the Licensee to use iridium-192 and cobalt-60 sealed sources for the performance of industrial radiography at its facility in Wexford, Pennsylvania, as well as at temporary job sites. The License was most recently renewed on January 31, 1989, and expired on January 31, 1994. In addition, the Licensee submitted a request, dated December 30, 1993, that the license be terminated. Action on that request has been held in abeyance pending further NRC review.

In addition, PI acted as a vendor supplying services to licensees of nuclear power plants, including the performance of nondestructive testing services, such as eddy current testing (ET). Such services were provided to the licensees of Perry and Cooper nuclear power plants in 1993.

On December 2 and 3, 1993, the NRC performed an inspection at the Licensee's Wexford facility of activities conducted under the License. During that inspection, the NRC found numerous violations of NRC requirements. The violations included: the failure of the RSO named on the License to perform required duties; the failure to conduct quarterly audits of all radiographers; the failure to provide the required annual refresher training to the radiographers; the failure to perform, at the required frequency, the required inspection and maintenance on the exposure device (camera) containing an iridium-192 source; the failure to perform leak tests of the sealed sources at the required frequency; the failure to promptly collect and submit film badges for processing; and the failure to maintain radiography utilization logs.

On December 2, 1993, an NRC investigation was also initiated by the NRC Office of Investigations (OI). During its investigation, OI concluded that:

- a. with respect to the materials license, responses in PI's response letter dated July 14, 1993, to the NRC were deliberately incomplete and inaccurate, and the President and former RSO were responsible for providing this false information to the NRC. Specifically, the inaccurate information provided to the NRC was in response to a previous Notice of Violation issued to the Licensee on June 16, 1993, for numerous violations identified during an NRC inspection conducted in April 1993.

In a response, signed by Mr. Mulkey, to the violations listed in the June 16, 1993 Notice of Violation, the licensee stated that:

(1) observations of the licensee's radiographers had been made when, in fact, the observations had not been made; (2) a ratemeter had been sent for calibration, when, in fact, the ratemeter had not been sent; (3) pocket dosimeters had been calibrated, when, in fact, the dosimeters had not been calibrated; (4) source utilization logs had been maintained, when, in fact, the logs had not been maintained; (5) personnel monitoring reports were available, when, in fact, the reports had not been available.

- b. with respect to the vendor-related activities, false ET qualification certifications were deliberately generated by PI for at least three employees who performed ET examinations at Perry and Cooper nuclear power plants during 1993 and ET qualification certification examination results and Personnel Certification Summaries were generated for four employees, and these falsifications were condoned or directed by the former President, former Vice President/RSO (i.e., Mr. Mulkey), and the former Quality Assurance Manager.

In addition, Mr. Mulkey deliberately provided false information to the NRC during a December 2, 1993 telephone discussion with a representative of the NRC in that Mr. Mulkey stated he was the RSO, and that in September of 1993 he had visited the Wexford office and executed the duties of an RSO. These statements were false in that: (1) interviews with PI employees established that Mr. Mulkey had not visited the Wexford office during 1993, and they were

not aware of Mr. Mulkey performing any audits related to radiographic operations out of the Wexford office; and (2) Mr. Mulkey indicated during the predecisional enforcement conference on October 2, 1996, that he left the position of RSO for the Wexford facility at the end of 1992 to work in Florida. However, during the conference, Mr. Mulkey also indicated that at the time he responded to the NRC in the July 14, 1993 letter, he was the RSO and was responsible for compliance with the license.

III

Based on the above, Mr. Mulkey, former Vice President and RSO of PI, a licensee of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), which caused PI to be in violation of 10 CFR 30.9(a). Specifically, as a result of Mr. Mulkey's actions, PI violated 10 CFR 30.9(a) by providing to the NRC a letter dated July 14, 1993, which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in an NRC Notice of Violation dated June 16, 1993. Mr. Mulkey also engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2) by deliberately providing false information to the NRC during the December 2, 1993 telephone discussion with a representative of the NRC. Specifically, Mr. Mulkey stated he was the RSO, and that in September of 1993 he had visited the Wexford office and executed the duties of an RSO.

Moreover, Mr. Mulkey, an employee of PI, a contractor to licensees of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2), by deliberately submitting in March and in October 1993 to the Cleveland Electric

Illuminating Company (CEIC) and Nebraska Public Power District (NPPD), both licensees of the NRC, ET qualification certification examination results and Personnel Certification Summaries which were inaccurate.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Mulkey's actions in causing the Licensee to be in violation of NRC requirements and in deliberately violating NRC requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to both the NRC and NRC licensees.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Mr. Mulkey, or records required to be maintained by the Licensee, will be complete and accurate in all material respects if Mr. Mulkey were permitted to be involved in any NRC-licensed activities. I also lack the requisite assurance that NRC-licensed activities will be conducted safely or in accordance with NRC requirements or that the health and safety of the public will be protected if Mr. Mulkey were involved in NRC-licensed activities. In addition, I find that Mr. Mulkey is either unable or unwilling to assure that NRC requirements are being and will be followed.

Therefore, I find that the public health, safety, and interest require that Mr. Mulkey be prohibited from involvement in NRC-licensed activities for five years from the date of this Order, and if he is currently engaged in

NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 57, 62, 81, 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 30.10, 50.5, and 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. James L. Mulkey is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include the licensed activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction. In addition, if Mr. Mulkey is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer.
- B. The first time that Mr. Mulkey engages in an NRC-licensed activity following the five year prohibition, he shall notify the Director,

Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at least five days prior to the performance of the licensed activity or his being employed to perform NRC-licensed activities (as described in A. above). The notice shall include the name, address, and telephone number of the employer or the entity where he will be involved in the NRC-licensed activity. In the notification, Mr. Mulkey shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement (OE), may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Mulkey of good cause.

V

In accordance with 10 CFR 2.202, Mr. Mulkey must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order, and shall set forth the matters of fact and law on which Mr. Mulkey or other

person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Mulkey if the answer or hearing request is by a person other than Mr. Mulkey. If a person other than Mr. Mulkey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Mulkey or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mulkey or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 7th day of February 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 28, 1998

IA 98-001

Mr. Albert M. Nardslico
**HOME ADDRESS DELETED
UNDER 2.790**

Dear Mr. Nardslico:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC Office of Investigations Report NO. 1-96-015)**

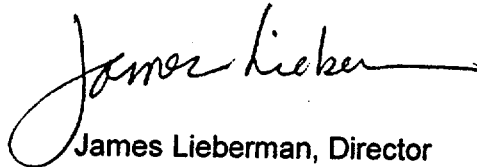
The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you based on the finding by the NRC Office of Investigations (OI) that you intentionally altered the Niagara Mohawk Power Company (NMPC) Fitness for Duty (FFD) computer code to ensure that certain individuals, including yourself, would be excluded from random FFD screening. As such, you violated 10 CFR 50.5(a)(1) which provides, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, order, or any term, condition, or limitation of any license issued by the Commission. Specifically, you deliberately caused NMPC to violate 10 CFR Part 26 by your involvement in altering the selection code intended to assure that individuals are selected for FFD testing in a statistically random and unpredictable manner. The synopsis of the OI investigation was forwarded to you on January 8, 1998. A predecisional enforcement conference was held with you on February 13, 1998, to discuss this apparent violation, its causes, and your corrective action.

The Order prohibits your involvement in NRC-licensed activities for a period of five years. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741. Also enclosed is a letter issued on this date to Niagara Mohawk Corporation regarding this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosures with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in black ink that reads "James Lieberman". The signature is written in a cursive style with a long horizontal stroke at the end.

James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
(Effective Immediately)
2. Letter to Niagara Mohawk Power Corporation

cc w/encls:

B. Ralph Sylvia, Executive Vice President
State of New York

ENCLOSURE

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

IA 98-001

MR. ALBERT M. NARDSLICO, JR.

)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Albert M. Nardslico (Mr. Nardslico) was formerly employed as a contractor employee at the Niagara Mohawk Power Corporation (NMPC) Nine Mile Point nuclear facility as a computer programmer. NMPC holds Facility License Nos. DPR-63 and NPF-69 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize NMPC to operate the Nine Mile Point facilities, Units 1 and 2, in accordance with the conditions specified therein.

II

In May 1996, NMPC initiated an investigation into whether Mr. Nardslico and others were involved in the alteration of a computer code used to select individuals for random drug and alcohol testing. Based on the evidence developed during the NMPC investigation, as well as a subsequent review by the NRC Office of Investigations (OI), OI concluded that Mr. Nardslico and another contractor computer programmer intentionally altered the fitness-for-duty (FFD) computer program to ensure that certain individuals (including themselves) would be excluded from random FFD screening. Specifically, a patch had been inserted into the computer program to ensure certain individuals would not be selected. Moreover, the two individuals planned and executed a scheme (and a number of precautions) to elude detection and prevent tracing.

These actions caused NMPC to violate 10 CFR 26.24, which requires that individuals be tested for drugs and alcohol in a statistically random and unpredictable manner. As a result of this violation, Mr. Nardslico, the other contractor employee involved in planning the scheme, and others, were prevented from being selected for random FFD testing. In addition, during the time in which his name was excluded from random selection, Mr. Nardslico had access to the site protected area, which was also at a time when Mr. Nardslico may have been using marijuana offsite. (Mr. Nardslico admitted, during the predecisional enforcement conference in the NRC Region I office on February 13, 1998, and during a June 21, 1996 interview with NMPC investigators, that he had used marijuana while employed at Nine Mile Point. While he did not recall the periods of such use, he was unable to confirm that he did not use marijuana while his name had been excluded from the FFD testing pool.)

During his interviews with NMPC, as well as during the predecisional enforcement conference with the NRC, Mr. Nardslico denied that he was involved in the alteration of the computer program. Notwithstanding Mr. Nardslico's denials, another contractor computer programmer, who had admitted his involvement in the alteration, implicated Mr. Nardslico as also being involved in the alteration. Specifically, in transcribed interviews under oath, the other contract computer programmer indicated: (1) that the corruption of the FFD computer code was a joint effort of him and Mr. Nardslico; (2) that he and Mr. Nardslico in the July/August 1993 timeframe "fleshed out" a way to make changes to the fitness for duty program through the use of the "C" program; (3) that Mr. Nardslico had suggested adding additional persons' names to the scheme to "disperse" suspicion; and (4) that he had observed Mr. Nardslico use marijuana on at least one occasion subsequent to the September 1993 code corruption. In addition, Mr. Nardslico admitted that he was aware of the computer code alteration, was also aware that his name was one of those eliminated from the FFD testing pool as part of the alteration, and was further

aware that he was subject to FFD random testing because of his having access to the Nine Mile Point site. Nonetheless, Mr. Nardslico did not take appropriate action to remedy the situation or ensure that his management was made aware that the computer code had been altered, as he admitted during the predecisional enforcement conference.

Finally, some of Mr Nardslico's statements on this matter lack credibility. For example, in his first interview with NMPC on May 20, 1996, he denied any involvement in, or knowledge of, the alteration of the FFD computer code; however, in a subsequent interview with NMPC on June 21, 1996, as well as during the predecisional enforcement conference with the NRC on February 13, 1998, Mr. Nardslico admitted his knowledge of the alteration of the computer code. Also, although Mr. Nardslico indicated that he did inform a licensee Purchasing Supervisor of the alteration shortly after he stated he became aware of it, that individual denied Mr. Nardslico's assertion, and Mr. Nardslico admitted that he did not raise this issue with anyone else in the NMPC organization. In addition, although Mr. Nardslico indicated that he was not familiar with the "C" programming language, which was the language used for the FFD computer code, his resume listed the "C" language as one of the languages with which he was familiar, and others testified that Mr. Nardslico was familiar with this language. Further, Mr. Nardslico, during his interviews with NMPC, expressed a willingness to enter into business relationships with the other individual who was involved with the alteration of the computer code, while at the same time indicating that he was disturbed by the other individual's actions and lack of judgment.

III

Based on the above, the NRC has concluded that Mr. Nardslico engaged in deliberate misconduct. Mr. Nardslico's actions constitute a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In this case, Mr. Nardslico caused the Licensee to be in violation of 10 CFR 26.24. Specifically,

10 CFR Part 26.24, requires, in part, that as a means to deter and detect substance abuse, the licensee shall implement a testing program that includes unannounced drug and alcohol testing that is to be imposed in a statistically random and unpredictable manner so that all persons in the population subject to the testing shall have an equal probability of being selected and tested.

Contrary to the above, at some time prior to May 1996, the actions of Mr. Nardslico and another contractor computer programmer resulted in the licensee maintaining an altered FFD computer program used to ensure that individuals were tested for drugs and alcohol in a statistically random and unpredictable manner, resulting in certain individuals (including Mr. Nardslico) being excluded from random FFD screening. As a result, for a indeterminate period prior to May 1996, individuals were selected for testing in a manner that was not statistically random and unpredictable.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor

employees to comply with NRC requirements. Mr. Nardslco's involvement in the altering of the FFD program, including his collusion with another contractor employee to hide that alteration, constitute a deliberate violation of Commission regulations, and by doing so, raises serious doubt as to whether he can be relied upon to comply with NRC requirements, and raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Nardslco were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Nardslco be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, for a period of three years after the five year period of prohibition has expired, Mr. Nardslco is required to notify the NRC of his acceptance of each employment offer involving NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nardslco's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 103, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Albert M. Nardslico Jr. is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. For a period of three years after the five year period of prohibition has expired, Mr. Nardslico shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Nardslico shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nardslico of good cause.

In accordance with 10 CFR 2.202, Mr. Nardslico must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Nardslico or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Nardslico if the answer or hearing request is by a person other than Mr. Nardslico. If a person other than Mr. Nardslico requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

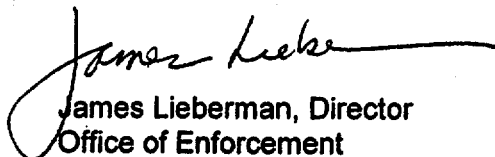
If a hearing is requested by Mr. Nardslico or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is

held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Nardslico may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. **AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.**

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 28th day of April 1998



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 27, 1997

IA 97-004

Mr. James C. Nelson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Nelson:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 of the Commission's regulations. Specifically, you deliberately permitted use of a portable moisture density gauge containing NRC-licensed material while under an October 24, 1995, Order Suspending License (Effective Immediately) prohibiting such use causing the licensee to be in violation of 10 CFR 30.34. Further, you deliberately provided information to the NRC regarding the identity of the Radiation Protection Officer on your license that you knew was inaccurate. Based on your deliberate actions, the Order prohibits your involvement in NRC-licensed activities for a period of five years.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room (PDR).

Sincerely,

A handwritten signature in black ink, appearing to read "E. L. Jordan".

Edward L. Jordan, Deputy Executive
Director for Regulatory Effectiveness,
Program Oversight, Investigations
and Enforcement

Enclosure: Order Prohibiting Involvement
in NRC Licensed Activities
(Effective Immediately)

cc w/enc [HOME ADDRESS DELETED]:
State of West Virginia

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the matter of
James C. Nelson

)
)
)

IA 97-004

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. James C. Nelson owns and operates Nelson Excavating, Inc. in Thomas, West Virginia. Nelson Excavating, Inc. (Licensee) holds By-product License No. 47-24923-02, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License was initially issued on June 24, 1987, and last renewed on September 17, 1992. The License authorizes the Licensee to use a Troxler Electronic Model 3400 series portable moisture density gauge for soil compaction measurements in accordance with the conditions specified therein. The License was extended for a period of five years on March 1, 1996, and will expire on September 30, 2002. On August 15, 1996, the Licensee discontinued licensed activities and transferred its gauge containing nominally 11 millicuries (mCi) of Cesium-137 and 44 mCi of Americium-241 to an authorized recipient. On August 15, 1996, the Licensee formally requested termination of its NRC License. The License is being terminated separately in accordance with this request.

II

On October 24, 1995, the NRC's Office of the Controller issued an Order Suspending License (Effective Immediately) to Nelson Excavating, Inc. suspending its License for the non-payment of fees in the amount of \$2873.48,

including late penalties of \$753.48. The Order required, among other things, that the Licensee immediately restrict its activities involving licensed material to safe, secure storage or appropriate disposal until notified by the NRC in writing that the License had been terminated. The Order became final on November 24, 1995, following the Licensee's failure to respond to the NRC or pay the fees within the 30 days specified in the Order.

During the period March 19 through April 1, 1996, NRC Region II conducted a special safety inspection of licensed activities to determine the status of the gauge and compliance with the October 24, 1995 Order. The inspection determined the following: (1) The Licensee used the gauge containing by-product material on November 6, 1995, and January 4, 1996, contrary to the requirements of the October 24, 1995, Order; (2) The Licensee was using a different Radiation Protection Officer than that identified in Condition 11 of the License. The Licensee also represented to the NRC in a letter, dated September 17, 1992, that the individual named in the License was still acting as Radiation Protection Officer, when in fact the individual was not, contrary to the requirements of 10 CFR 30.9; and (3) The Licensee failed to test the licensed material for leakage at the required frequency contrary to Condition 14 of the License.

On May 15, 1996, NRC Region II management contacted the Licensee to discuss compliance with the October 24, 1995 Order. Mr. Nelson indicated that his licensed material had been used for the work conducted on November 6, 1995, and January 4, 1996, under another license and not that issued to Nelson

Excavating, Inc. Additionally, he affirmed that he understood the provisions of the Order that the gauge was to be placed in storage and not used.

On June 11, 1996, a Demand for Information (DFI) was issued to the Licensee in order to obtain a written response regarding the two apparent uses of licensed material and the potential submittal of inaccurate information to the NRC on September 17, 1992. The Licensee's response was due on July 11, 1996.

Since the licensee was unresponsive to NRC's request in the DFI and numerous telephone inquiries, NRC Region II conducted another inspection at the Licensee's facility in Thomas, West Virginia, on August 14 and 15, 1996. During that inspection, eleven additional uses of the Licensee's gauge after issuance of the Order were identified through a review of gauge utilization records. Ten of the uses occurred following the May 15, 1996, discussions between NRC Region II and the Licensee confirming the Licensee's understanding of the Order. As a result of this inspection, the Licensee transferred the gauge to an authorized recipient and documented the transfer appropriately on August 15, 1996.

As a result of the NRC inspection and prompting by the NRC, the Licensee also submitted a written response to the DFI on August 15, 1996. The response admitted that the gauge was used on 13 occasions during the prohibition period. As an explanation, Mr. Nelson stated that he had reading and comprehension difficulties, and following his March 19, 1996, payment of backfees and receipt of a March 1, 1996, notice from NRC extending his license until September 30, 2002, he felt that he could use his license material. In

addition, he stated that he paid for it [the gauge], he owned it, and would use it accordingly. The DFI response further provided statements by two employees of the Licensee that they had not been instructed by Mr. Nelson not to use the gauge.

By letter, dated September 25, 1996, the Licensee and Mr. Nelson were requested to attend a predecisional enforcement conference to discuss the apparent violations, their root causes, and the corrective actions to preclude recurrence. As of the date of this Order, NRC has not received any response from Mr. Nelson, despite numerous attempts to contact him. Contact with the Office Manager for Nelson Excavating, Inc, however, indicated that due to personal problems, Mr. Nelson did not intend to respond.

Despite the lack of a response to NRC's September 25, 1996, letter, based on the information gathered during the inspections and in the response to the DFI, the following was concluded regarding Mr. Nelson's activities: (1) he deliberately provided information that he knew was inaccurate to the NRC regarding the identity of the Radiation Protection Officer in a September 17, 1992, letter; and (2) he deliberately permitted the use of the gauge containing licensed material on 13 occasions during the period that use of the gauge was prohibited by the October 24, 1995 Order. In addition, Mr. Nelson has failed to respond to numerous requests from the NRC regarding oversight of his NRC license. This failure caused the NRC to perform two onsite inspections to assure licensed activities were conducted in accordance with NRC regulations.

Based on the above, it appears that James C. Nelson, the owner and operator of the Nelson Excavating, Inc., has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), in that he deliberately caused the Licensee to be in violation of 10 CFR 30.34 (a), Terms and Conditions of License, by permitting the use of the gauge containing licensed material on 13 occasions following the October 24, 1995 Order prohibiting use of the gauge, and in violation of 10 CFR 30.10(a)(2) in that he deliberately submitted information to the NRC regarding the identify of the RPO in a September 17, 1992 letter that he knew was inaccurate. Mr. Nelson's disregard for and failure to adhere to NRC regulations and an Order strongly suggests a lack of integrity which cannot be tolerated. As owner and operator of Nelson Excavating, Inc., Mr. Nelson was responsible for ensuring that Nelson Excavating, Inc. conducted activities safely and in accordance with NRC requirements and the October 24, 1995, Order. The NRC must be able to rely on the Licensee, its officials, and employees to comply with NRC requirements and the terms of NRC Orders prohibiting the use of licensed materials, and to communicate to the NRC with candor and honesty.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Nelson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Nelson be prohibited from any oversight of or involvement in NRC-licensed activities for

a period of five years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nelson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. For a period of five years from the date of this Order, James C. Nelson is prohibited from any involvement in or exercising control over NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.
- B. Following the five-year period of prohibition outlined in Section IV.A above, at least five days prior to the first time that James C. Nelson engages in, or exercises control over, NRC-licensed activities, he shall

notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that James C. Nelson is committed to compliance with NRC requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nelson of good cause.

V

In accordance with 10 CFR 2.202, James C. Nelson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which James C. Nelson or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be

submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street N.W., Suite 2900, Atlanta, GA 30323, and to James C. Nelson if the answer or hearing request is by a person other than James C. Nelson. If a person other than James C. Nelson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

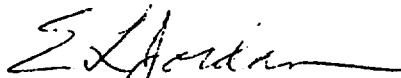
If a hearing is requested by James C. Nelson or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), James C. Nelson, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV

above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Edward L. Jordan, Deputy Executive
Director for Regulatory Effectiveness,
Program Oversight, Investigations
and Enforcement

Dated at Rockville, Maryland
this 27th day of January 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 5, 1997

IA 97-060

Mr. Steven F. Nevin
HOME ADDRESS DELETED
UNDER 2.790

Dear Mr. Nevin:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) (OI REPORT NO. 1-96-006)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued as a consequence of the finding by PECO Energy Company and the NRC Office of Investigations (OI) that you deliberately falsified records of Reactor Enclosure Cooling Water (RECW) sample documentation on February 7, 1996. The synopsis of the OI investigation was forwarded to you on May 21, 1997. The NRC has concluded that you violated 10 CFR 50.5(a)(1) which provides, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, order, or conduct of the license. Specifically, you deliberately caused PECO Energy Company to violate 10 CFR 50.9 by falsifying a record of a chemistry sample. You were offered the opportunity to discuss these findings at a predecisional enforcement conference, but you declined.

The Order prohibits your involvement in NRC-licensed activities for a period of 3 years. In addition, subsequent to the 3-year period, the Order requires you to notify the NRC the first time you accept employment involving NRC-licensed activities or your becoming involved in NRC-licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741. Also attached is a Proposed Notice of Violation and Proposed Imposition of Civil Penalty issued on this date to PECO Energy Company for the falsification of records that was based, in part, on your deliberate actions.

Mr. Steven F. Nevin

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



Ashok C. Thadani
Acting Deputy Executive Director
for Regulatory Effectiveness

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
(Effective Immediately)
2. Notice of Violation and Proposed Imposition of Civil Penalty
to PECO Energy Company

cc w/encl:

D. M. Smith, President, PECO Nuclear
Commonwealth of Pennsylvania

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MR. STEVEN F. NEVIN

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)

IA 97-060

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Steven F. Nevin (Mr. Nevin) was formerly employed by PECO Energy Company at the Limerick Generating Station (PECO, Limerick, or Licensee) as a chemist. PECO holds Facility License No. NPF-39 and NPF-84 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize PECO to operate the Limerick Station, Units 1 and 2, in accordance with the conditions specified therein.

II

On February 7, 1996, while a Reactor Enclosure Cooling Water (RECW) radiation monitor was inoperable, the Licensee was required, in accordance with Technical Specification 3.3.7.1, ACTION 72, to obtain and analyze at least one grab sample from the RECW system at least once per 24 hours. On that date, the sample needed to be taken by 11:00 a.m. to meet that requirement. The sample was not taken until 12:15 p.m. on that date, approximately 1 hour and 15 minutes after the time it was due. However, the record of the grab sample RECW Surveillance Test (ST-5-026-570-1, "Inop Reactor Enclosure Cooling Water Rad Mon Grab Sampling and Analysis"), signed by a chemistry technician and Mr. Nevin, the chemist (as chemistry supervision), was inaccurate because (1) page one of attachment 1 of the test record indicated that the time of the sample

was 11:00 a.m., and (2) the attached computer printout of the Gamma Spectrum Analysis, as changed by Mr. Nevin, also indicated that the sample was taken at 11:00 a.m.. The creation of this inaccurate record caused the Licensee to be in violation of 10 CFR 50.9, "Completeness and accuracy of information."

Afterwards, an investigation of this matter was conducted by PECO, and the NRC was informed of the findings. Subsequently, an investigation was conducted by the NRC Office of Investigations (OI), that determined, based upon the evidence developed during its investigation, and a review of evidence contained in the investigation report provided by PECO, that on February 7, 1996, Mr. Nevin, and the PECO chemistry technician, deliberately falsified RECW sample documentation, at the direction of Ms. Blacklock, the former PECO Primary Chemistry Manager.

Mr. Nevin was interviewed by OI on July 24 and December 10, 1996. During the interviews, Mr. Nevin indicated initially that he corrected the sample time recorded in the Gamma Spectrum Analysis from 12:15 p.m. to 11:00 a.m. because he was told that another sample (taken earlier) had been found. Upon further questioning, Mr. Nevin admitted to the initial fabrication and stated that he and the chemistry technician falsified the surveillance test documents to record the sample time of 11:00 a.m. at the direction of the former Primary Chemistry Manager.

III

Based on the above, the NRC has concluded that Mr. Nevin engaged in deliberate misconduct. Mr. Nevin's actions constitute a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In this case, Mr. Nevin caused the Licensee to be in violation of 10 CFR 50.9, "Completeness and accuracy of information."

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements, including the requirement to maintain information that is complete and accurate in all material respects. Mr. Nevin's action in falsifying records, and his collusion with others to hide that falsification, constitute deliberate violations of Commission regulations, and by doing so, raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC Licensees and their contractors in the future, and raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Nevin were permitted at this time to be involved in NRC-licensed activities.

Therefore, the public health, safety and interest require that Mr. Nevin be prohibited from any involvement in NRC-licensed activities for a period of 3 years from the date of this Order, and if Mr. Nevin is currently involved with another licensee in NRC-licensed activities, Mr. Nevin must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

Additionally, Mr. Nevin is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nevin's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Steven F. Nevin is prohibited from engaging in activities licensed by the NRC for 3 years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. After the 3-year period of prohibition has expired, Mr. Nevin shall, within 20 days of his acceptance of the first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Nevin shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nevin of good cause.

V

In accordance with 10 CFR 2.202, Mr. Nevin must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation,

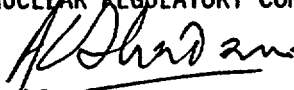
specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Nevin or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Nevin if the answer or hearing request is by a person other than Mr. Nevin. If a person other than Mr. Nevin requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Nevin or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Nevin may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Ashok C. Thadani
Acting Deputy Executive Director
for Regulatory Effectiveness

Dated at Rockville, Maryland
this 5th day of August 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 16, 1996

IA 96-043

Mr. Jesus Osorio
[HOME ADDRESS DELETED
UNDER 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES

Dear Mr. Osorio:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 of the Commission's regulations, as described in the Order. The Order becomes effective in 20 days unless a hearing is requested within this time.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order, once it becomes effective, shall be subject to criminal prosecution as set forth in that section. Failure to comply with the provisions of this Order may also result in civil sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hugh L. Thompson, Jr.", written in dark ink.

Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Material Safety, Safeguards
and Operations Support

Enclosure: Order Prohibiting Involvement
in NRC-Licensed Activities

cc: Commonwealth of Puerto Rico

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)

IA 96-043

Jesus N. Osorio)
[HOME ADDRESS DELETED)
UNDER 10 CFR 2.790]

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Jesus N. Osorio was employed as the Radiation Safety Officer (RSO) of NDT Services, Inc. (NDTS or Licensee) in Caguas, Puerto Rico, in 1993. NDTS holds License No. 52-19438-01, issued to the Licensee in 1987 and last amended by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30, on March 9, 1995. The license authorizes industrial gamma ray radiography in accordance with the conditions specified therein. Mr. Osorio was identified in consecutive amendments to NRC License No. 52-19438-01, dated January 12, 1992 and October 26, 1993, and in other licensing correspondence, as the RSO for NDTS.

II

On December 16-17, 1993, a special inspection of NDTS' activities was conducted at the Licensee's facility in Caguas, Puerto Rico, in response to notifications received in the NRC Region II office that on September 4, 1993, two contract radiographers¹ employed by NDTS had been unable to return a radiography source to its shielded position following radiographic operations.

¹ The radiographers involved in the event were contracted by NDTS from National Inspection and Consultants (NIC), an Agreement State licensee in Florida. While no written contract was established to outline the scope and conditions of work, based on the information available, the NRC concluded that the work performed on September 4, 1993, was performed under the provisions of the NDTS license.

which resulted in the evacuation of the Sun Oil Company refinery located in Yabucoa, Puerto Rico, for several hours. Based on the results of the inspection, an investigation was initiated by the NRC Office of Investigations (OI) on December 30, 1993.

On December 21, 1995, OI completed its investigation and concluded, in part, that: (1) NDTs, with the knowledge and approval of the former RSO and former President, deliberately utilized radiographers untrained in NDTs operating and emergency procedures; and (2) NDTs, through the actions of the former RSO, provided the NRC with documentation that falsely certified the radiographers' training.

During an August 31, 1995 interview with OI, Mr. Osorio stated that he was aware that the radiographers needed training and that they were required to pass a proficiency test prior to working at the Sun Oil Company refinery. Mr. Osorio added that, prior to hiring the radiographers, he informed NDTs' former President that the radiographers would have to be trained and tested on NDTs equipment. Nonetheless, Mr. Osorio did not train the radiographers because they left for their accommodations and he was tired and went home, although he knew that they would work their shift without the required training. As to the false training documentation, Mr. Osorio stated that he knew he signed false documentation and that such falsification constituted a violation of NRC regulations, but he signed the documentation because he "needed to have something."

Based on the OI conclusions, the NRC further concluded that during the December 16-17, 1993 inspection, the former RSO orally represented to an NRC inspector that he demonstrated the safe use of the NDTs radiography equipment prior to allowing two contract radiographers to operate the equipment on September 3, 1993, when he knew that he had not conducted such a demonstration.

On February 15, 1996, Mr. Osorio was contacted by telephone and initially informed of the inspection and investigation results and was provided the opportunity to participate in a predecisional enforcement conference. During this telephone conversation, Mr. Osorio declined to attend this conference. By letter dated February 20, 1996, Mr. Osorio was transmitted the Inspection Report and the synopsis of the OI investigation and again offered the opportunity to attend a conference. To date, Mr. Osorio has not responded to the February 20, 1996 letter. No conference has been conducted with him; however, on May 16, 1996, a teleconference was conducted with Mr. Osorio to further discuss this case. Additionally, on February 29 and March 4, 1996, predecisional enforcement conferences were conducted with one of the contract radiographers, and NDTs, respectively.

Based on the information gathered during the inspection, investigation, predecisional enforcement conferences, and subsequent interviews in this case, the NRC has determined that: (1) Mr. Osorio deliberately permitted unqualified radiographers to perform radiography for NDTs on September 4, 1993, in that he knew the radiographers had not been trained in NDTs procedures or equipment; (2) on December 16, 1993, Mr. Osorio provided an NRC

inspector with written certification of the qualifications of the two contract radiographers, dated September 3, 1993, which falsely indicated that the radiographers had been qualified based on records obtained from their principal employer and by the experience demonstrated by the contract radiographers to him; and (3) on December 16, 1993, Mr. Osorio provided false oral statements to an NRC inspector indicating that he had demonstrated the safe use of the NDTs radiography equipment to the radiographers on September 3, 1993, when, in fact, he had not conducted such a demonstration.

III

Based on the above, the staff concludes that Mr. Osorio engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 34.31(a) by deliberately failing to utilize trained and qualified individuals during the conduct of radiographic operations at the Sun Oil Company refinery on September 4, 1993. Mr. Osorio also violated 10 CFR 30.10(a)(2), and caused the Licensee to be in violation of 10 CFR 30.9, by deliberately providing materially inaccurate and incomplete information to the NRC. As the former RSO of NDTs, Mr. Osorio was responsible to assure that NDTs conducted activities in accordance with NRC requirements and the NDTs radiation safety program. The NRC must be able to rely on the Licensee, its officials and employees to comply with NRC requirements, including the requirements to train radiographers in accordance with NRC regulations and to provide complete and accurate information to the NRC. Mr. Osorio's deliberate misconduct in causing the Licensee to violate 10 CFR 34.31(a), and his deliberate submission to the NRC materially inaccurate and incomplete

information, are violations of 10 CFR 30.10 and have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Osorio were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Osorio be prohibited from any involvement in NRC-licensed activities for a period of five years, and, if he is currently involved with another licensee in NRC-licensed activities, he must, following the effective date of this Order, cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Osorio is required to notify the NRC of his first employment involving NRC-licensed activities within a period of five years following the five-year prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

- A. For a period of five years from the effective date of this Order, Jesus N. Osorio is prohibited from engaging in, or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities

are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising, directing, or serving as Radiation Safety Officer for any licensed activities conducted within the jurisdiction of the NRC.

- B. At least five days prior to the first time that Jesus N. Osorio engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition in Section IV.A above, a, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Jesus N. Osorio understands NRC requirements, that is committed to compliance with NRC requirements, and that provides a basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Osorio of good cause.

In accordance with 10 CFR 2.202, Jesus N. Osorio must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Osorio or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, Atlanta, GA 30323, and to Jesus N. Osorio, if the answer or hearing request is by a person other than Jesus N. Osorio. If a person other than Jesus N. Osorio requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Jesus N. Osorio, or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 16th day of July 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 19, 1999

IA 99-037

Mr. Stanislaw Piorek, Ph.D.
**HOME ADDRESS DELETED
UNDER 2.790**

Dear Dr. Piorek:

**SUBJECT: CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)
(NRC Office of Investigations Report No. 1-1998-036)**

The enclosed Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you based on the findings by the NRC Office of Investigations (OI) that you deliberately violated NRC requirements. The violations occurred while you were serving as Radiation Safety Officer and Vice President at New Technology Development for Metorex, Inc. (MI). The synopsis of the investigation was sent to you on August 6, 1999.

On August 11, 1999 you consented to the issuance of this Order with commitments, as described in Section IV of the Order. The Order: (1) prohibits your involvement in NRC-licensed activities for three years; and (2) requires that, no less than five days prior to the first time that you engage in NRC-licensed activities during a period of five years following the 3-year prohibition, you provide written notice to the NRC of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order may be addressed to Nader Mamish, Office of Enforcement, who may be reached at telephone number (301) 415-2740.

Stanislaw Piorek

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



R. W. Borchardt, Director
Office of Enforcement

Enclosure: Confirmatory Order Prohibiting Involvement in
 NRC-Licensed Activities (Effective Immediately)

cc w/encl:
Commonwealth of Massachusetts

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Stanislaw Piorek, Ph.D.

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IA 99-037

CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Stanislaw Piorek, Ph.D. is a former employee of New Technology Development for Metorex, Inc. (MI). While employed by MI, he functioned as Radiation Safety Officer and Vice President. MI holds Nuclear Regulatory Commission (NRC) License Nos. 29-30342-02G and 29-30342-01. License No. 29-30342-02G authorizes distribution of generally licensed devices. License No. 29-30342-01 authorizes sealed sources for use and possession incident to the distribution of specifically licensed devices; research and development as defined in 10 CFR 30.4; manufacturing and testing of analyzer devices; installation and removal from analyzer devices; repair and servicing of devices; calibration of instruments, receipt, storage, and transfer of devices from customers for disposal; demonstrations of devices; and instruction and training in the use of devices.

II

On August 20, 1998, NRC conducted a safety inspection of activities authorized by MI's licenses. The inspection reviewed the circumstances surrounding the unauthorized distribution of x-ray fluorescence analyzer devices (SIPS Probes) from October 1997 through July 1998. Based on the findings of the August 20, 1998 inspection, the NRC's Office of Investigations (OI) initiated an investigation on August 24, 1998. The OI investigation determined that Stanislaw Piorek, Ph.D. deliberately failed to stop shipments of x-ray fluorescence analyzer devices

during the period January 1998 through July 1998, knowing that MI was not authorized by the NRC to distribute them. In addition, OI concluded that Dr. Piorek deliberately failed to submit quarterly reports to the NRC, regarding the transfer of radioactive material, for the fourth calendar quarter of 1997 and the first calendar quarter of 1998. As a result, the NRC has concluded that Dr. Piorek violated 10 CFR 30.10, "Deliberate Misconduct," in that Dr. Piorek caused the Licensee to be in violation of NRC requirements. Specifically: (1) in failing to stop distribution of x-ray fluorescence analyzer devices, Dr. Piorek caused the licensee to be in violation of 10 CFR 30.3; and (2) in failing to submit quarterly reports to the NRC, Dr. Piorek caused the licensee to be in violation of a violation of 10 CFR 32.52. Dr. Piorek has cooperated in the investigation of these matters and has admitted that these violations occurred.

III

In a telephone call on August 4, 1999, Dr. Piorek, through his attorney, agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC- licensed activities for a period of three (3) years from July 1, 1998, the date that Dr. Piorek ended his employment at MI and ceased involvement in NRC-licensed activities. On August 11, 1999, Dr. Piorek consented to the issuance of this Order with the commitments, as described in Section IV below. Dr. Piorek further agreed in the August 11, 1999 letter that this Order be effective upon issuance and that he waived his right to a hearing.

I find that Dr. Piorek's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Dr. Piorek's commitments be confirmed by this Order. Based on the above and Dr. Piorek's consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 32, and 10 CFR 30.10, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. For a period of three years from July 1, 1998, the date that Dr. Piorek ended his employment at MI and ceased involvement in NRC-licensed activities,

Dr. Stanislaw Piorek is prohibited from engaging in, or exercising control over individuals engaged in, NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition covers the following activities: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

Dr. Piorek may, however, provide advice to personnel on their use of devices containing licensed materials if such advice is described in a plan for such activities, which is reviewed and approved by the RSO or authorized designee. This advice is limited to the use of devices, not the contained licensed material. Dr. Piorek is not permitted to provide advice concerning use or installation of licensed material or compliance with NRC requirements. In addition, the actual conduct of such activities must be under the supervision of an authorized user. For purposes of this Order, an authorized user is a person who is listed on the license as a user of, or is an individual who supervises other persons using, NRC licensed material.

- B. No less than five (5) days prior to the first time that Dr. Stanislaw Piorek engages in, or exercises control over, NRC-licensed activities during a period of five (5) years following the three-year prohibition stated in Section IV.A above, the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, shall be notified in writing of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. This notice shall be accompanied by a statement by Dr. Stanislaw Piorek, under oath or affirmation, that he understands the applicable NRC requirements and is committed to compliance with NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Dr. Piorek of good cause.

V

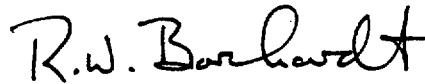
Any person adversely affected by this Confirmatory Order, other than Dr. Piorek, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address. If such a person requests a hearing, that person shall set

forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. **AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.**

FOR THE NUCLEAR REGULATORY COMMISSION



R. W. Borchardt, Director
Office of Enforcement

Dated this 19th day of August, 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 5, 1998

IA 97-074

Mr. Darrel T. Rich
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

Dear Mr. Rich:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC LICENSED ACTIVITIES
(OI REPORT NO. 3-96-055)**

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Order) is being issued as a consequence of our finding that you deliberately falsified radiological survey records at Consumers' Big Rock Point nuclear plant on July 20, and September 15, 1996, by recording radiological survey results without performing the required surveys.

Based on that finding, the NRC has concluded that you violated the NRC's rules prohibiting deliberate misconduct. Specifically, 10 CFR 50.5(a)(2), "Deliberate Misconduct," prohibits any employee of an NRC licensee from deliberately providing information to a licensee, (Consumers), that the employee knows to be incomplete or inaccurate in some respect material to the NRC. Radiological survey records are material to the NRC pursuant to 10 CFR 20.1501 and 20.2103, "Records of Surveys." By letter dated September 24, 1997, the NRC offered you the opportunity to discuss its findings at a predecisional enforcement conference (PEC) or to submit a written explanation by October 24, 1997. The September 24, 1997 letter also explained that if you did not request a PEC or respond by letter, the NRC would proceed with its enforcement action. As of the date of this letter, you had not replied to the NRC's September 24, 1997 letter.

The Order prohibits your involvement in NRC-licensed activities for a period of 3 years. In addition, subsequent to the 3 year period, the Order requires you to notify the NRC the first time you accept employment involving NRC-licensed activities or your becoming involved in NRC-licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741. Also attached is a Notice of Violation issued to Consumers for the falsification of records that was based, in part, on your deliberate actions.

Darrel T. Rich

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



Malcolm R. Knapp
Acting Deputy Executive Director for
Regulatory Effectiveness

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
2. Notice of Violation to Consumers Energy Company

cc w/encl 1:

Kenneth P. Powers, Site Director and Decommissioning
General Manager Big Rock Point Nuclear Plant
(WITH HOME ADDRESS REMOVED)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MR. DARREL T. RICH

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IA 97-074

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Mr. Darrel T. Rich (Mr. Rich) was formerly employed by Consumers Power Company (CPCo or Licensee) at the Big Rock Point Nuclear Plant (BRPNP) as a radiation protection technician. CPCo is the holder of License No. DPR-6 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. This license authorized CPCo to operate BRPNP in accordance with the conditions specified therein.

II

On October 18, 1996, the BRPNP assistant plant manager received allegations that routine radiological surveys required by plant procedures were not being performed by radiation protection technicians. An investigation was conducted by the Licensee in which radiation survey records were compared with security access records (*i.e.*, key card entries). The licensee concluded that in several instances the person recording radiation survey data, Mr. Darrel T. Rich, had either not entered the areas where the surveys were required to be

conducted or had not entered for a period of time long enough to conduct the survey. The survey records, when compared to the security access records, show that Mr. Rich documented that the following radiation surveys were made and that he could not have performed these surveys: on July 21, 1996, a required daily air sample on the 585' level of the BRPNPP; and the monthly survey for the Radwaste Building dated September 15, 1996. The Commission's regulations, specifically 10 CFR 20.1501(a), "Surveys and Monitoring," requires a licensee to perform surveys to determine the radiological conditions at an NRC-licensed facility. 10 CFR 20.2103(a), "Records of Surveys," further requires that a licensee maintain records showing the results of the surveys. Furthermore, BRPNPP Technical Specification, Section 10, "Administrative Controls," Paragraph 6.11, "Radiation Protection Program," requires that procedures for personnel radiation protection shall be prepared consistent with the requirements of 10 CFR Part 20, and shall be approved, maintained and adhered to all operations involving personnel radiation exposure. BRPNPP Procedure No. RP-29, "Radiological Surveys," is the plant procedure that implements Technical Specification Section 10, Paragraph 6.11. Paragraphs 5.2.2 through 5.4.4 of Procedure RP-29 specify the locations where radiological surveys are to be conducted and requires that the results of each survey be recorded. 10 CFR 50.9(b), "Completeness and Accuracy of Information," requires that information required by NRC regulations be maintained by an NRC licensee and the information shall be complete and accurate in all material respects.

The Licensee, on the basis of its investigation, concluded that Mr. Rich had falsified records of various radiological surveys. Mr. Rich resigned from BRPNP, effective November 7, 1996. As of November 8, 1996, Mr. Rich's unescorted access was unfavorably terminated for falsification

of company records. The NRC Staff reviewed the investigative information furnished by the Licensee and concluded that Mr. Rich deliberately falsified radiological survey data at BRPNP.

Prior to the 1996 events, the NRC Office of Investigations (OI) conducted an investigation (OI No. 3-91-018) into allegations that during October 1991, Mr. Rich did not take smear samples for radioactive contamination, but recorded the results as though he had taken the samples. The Licensee took disciplinary action against Mr. Rich at that time. The NRC did not take enforcement action against Mr. Rich because he admitted the violation and in consideration of the employment action taken by the Licensee involving Mr. Rich (EA 92-235).

III

Based on the above, it appears that Darrel T. Rich, a former employee of the Licensee, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR 20.1501 and 10 CFR 50.9(a). It further appears that Mr. Rich deliberately provided to the Licensee information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 50.5(a)(2), "Deliberate Misconduct." The information is material to the NRC because 10 CFR 20.1501 and 20.2103 and 10 CFR 50.9 require these radiation surveys to be performed and that accurate records of them be maintained. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements,

including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Rich's action in causing the Licensee to violate 10 CFR 20.1501, 20.2103 and 10 CFR 50.9(a) have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Rich were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Rich be prohibited from any involvement in NRC-licensed activities for a period of three years from the effective date of this Order, and if he is currently involved with another licensee in NRC-licensed activities at that time, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Rich is required to notify the NRC of his first employment in NRC-licensed activities in the three years following the prohibition period.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Darrel T. Rich is prohibited for three years from the effective date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of three years after the three year period of prohibition has expired, Mr. Rich shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Rich shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Rich of good cause.

V

In accordance with 10 CFR 2.202, Darrel T. Rich must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this

Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Rich or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Suite 255, Lisle, IL 60532-4351, and to Mr. Rich if the answer or hearing request is by a person other than Mr. Rich. If a person other than Mr. Rich requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Rich or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Malcolm R. Knapp
Acting Deputy Executive Director for
Regulatory Effectiveness

Dated at Rockville, Maryland
this 5th day of January 1998



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 27, 1999

IA 98-062

Mr. Brian K. Rogers
c/o March MetalFab, Inc.
2250 Davis Ct.
Hayward, CA 94545-1190

**SUBJECT: CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)**

Dear Mr. Rogers:

This letter refers to our letter of January 6, 1999 concerning consent to the provisions of a Confirmatory Order and your reply consenting to the terms proposed.

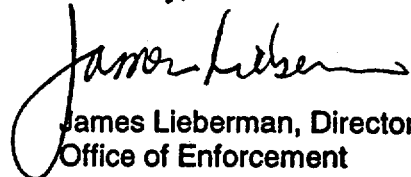
The enclosed Order is being issued as a result of the NRC's determination that as a result of the provision of inaccurate and incomplete information, public health and safety require that commitments be confirmed by a Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately).

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

Questions concerning this order should be addressed to Mr. Geoffrey Cant, 301/415-3283.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosure: As stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Brian K. Rogers

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IA 98-062

CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Brian K. Rogers is employed by March MetalFab, Inc. (MMI) as a Quality Assurance (QA) Manager. MMI is a subcontractor of Sierra Nuclear Corporation (SNC), which holds NRC Certificate of Compliance 72-1007 for the VSC-24 cask, used by general licensees, Palisades Nuclear Plant (PNP) and Arkansas Nuclear One (ANO). The general license (10 CFR 72.210) relied on by PNP and ANO is for the storage of spent nuclear fuel under 10 CFR Part 72.

II

In March 1995, PNP loaded spent fuel into a multi-assembly sealed basket (MSB) spent fuel cask that had been supplied by SNC and fabricated by MMI. When the cask was pressurized with helium, two leaks were identified in the wall of the MSB adjacent to the closure weld. Subsequent analysis by PNP metallurgical personnel determined that the defects were caused by underbead or hydrogen cracking, resulting from a base metal weld repair to the MSB shell inner wall that was performed during MSB manufacturing. The NRC staff learned of the problem experienced by PNP as a result of inspection activities following a similar closure weld failure at ANO. The staff became concerned that undetected cracks in other MSBs, produced by SNC that were already loaded with spent fuel, could propagate while the casks were in storage, affecting the integrity of the cask confinement boundary. As a result, during the week of March 17-21, 1997, a special inspection was conducted at SNC and MMI.

During the special inspection, five MMI employees who were considered most likely to have been aware of the fabrication activities during the manufacture of the MSBs that failed were interviewed. In his interview at this time, Mr. Rogers stated that he never saw any temporary attachments being installed or removed from the MSBs and had no knowledge of any unauthorized welding being conducted on the MSBs. He stated that there was no reason to conduct welding on the inside top area of the MSBs above the structural support ring area.

In July 1997, the NRC conducted a further inspection of MMI and SNC. During that inspection, employees of both companies acknowledged that undocumented welds had been made on casks sold to ANO and PNP. In the course of this inspection, both Mr. Rogers, the Quality Assurance Manager and the Project Manager for MMI admitted that they were aware that repair welding had been performed on the inside of the MSBs during fabrication and that they had not informed the NRC inspectors of those welds during the March 1997 inspection interviews. The NRC continued to investigate the matter and the Office of Investigations issued its report on October 16, 1998.

The NRC has concluded that because Mr. Rogers was knowledgeable about the fabrication process and was aware that welding had been done on the insides of the MSBs, he deliberately made statements in March 1997 to SNC and to the NRC that were inaccurate concerning the the internal welding. The information involved was material to the NRC's understanding as to the quality of the MSBs and delayed the NRC's action to ensure integrity of MSBs. As a result, the NRC has further concluded that in providing the information, Mr. Rogers violated 10 CFR 72.11, "Completeness and Accuracy of Information" and 10 CFR 72.12, "Deliberate Misconduct." The NRC believes that the circumstances of this matter raise questions as to Mr. Rogers willingness to comply with Commission requirements. Mr. Rogers has not admitted that a violation occurred.

III

In a telephone call on December 7, 1998, Mr. Rogers agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC- licensed activities for a period of five years from the date that the Order is issued. The staff believes that this will adequately protect the public health and safety and, therefore, finds this acceptable. MMI and Mr. Rogers requested that if the Order is issued, they be allowed to complete work on one small existing contract to supply 10 plug assemblies for a NUHOMS cask. This provision is acceptable, as the assemblies have a limited safety function that can be verified by measurement at the time of use. On January 6, 1999, the staff forwarded to Mr. Rogers a copy of the factual basis of the proposed order and the implementation paragraph. On January 11, 1999, Mr. Rogers consented to the issuance of the order with those provisions and waived his rights to a hearing on this action.

I find that Mr. Rogers' commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Rogers' commitments be confirmed by this Order. Based on the above and Mr. Rogers' consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 72 and 10 CFR 72.12, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

- A. Except as noted in paragraph B, Mr. Rogers is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order,

licensed activities include providing or supplying, whether directly to NRC licensees or Certificate of Compliance holders, or as a contractor or subcontractor to a licensee or Certificate of Compliance holder, structures, systems, or components, subject to a procurement contract specifying compliance with 10 CFR Chapter I.

- B. Mr. Rogers may complete work on the contract that MMI entered into prior to the date of this order to fabricate a total of 10 plug assemblies for a NUHOMS cask.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Rogers of good cause.


V

Any person adversely affected by this Confirmatory Order, other than Mr. Rogers, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address, and to Sierra Nuclear Corporation. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated this 27th day of January, 1999



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

July 21, 1999

IA 99-019

Mr. Richard A. Speciale
**HOME ADDRESS DELETED
UNDER 2.790**

Dear Mr. Speciale:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC Office of Investigations Report No. 1-98-043)**

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you based on the findings by the NRC Office of Investigations (OI) that you deliberately violated NRC requirements. The violations occurred while you were in the position of Director and Radiation Safety Officer at Special Testing Laboratories, Inc. and also while you were in the position of Director at Testwell Craig Laboratories of Connecticut (Testwell Craig). The synopsis of the investigation was sent to you on April 19, 1999.

A predecisional enforcement conference was held with you on June 10, 1999, to discuss these findings, the related violations, their causes, and your corrective action. At the conference, you acknowledged the violations. Your actions constitute a violation of: (1) 10 CFR 30.10(a)(1), which prohibits an employee of a licensee from engaging in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, order, or condition of the license; and (2) 10 CFR 30.10(a)(2), which prohibits an employee of a licensee from deliberately submitting to the NRC information that the person submitting the information knows to be inaccurate or incomplete in some respect material to the NRC.

The Order prohibits your involvement in licensed activities for five years and requires that you provide an answer to it within 20 days of the date of this letter. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741.

Richard A. Speciale

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,



Dr. Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Enclosure: Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

cc w/encl:
State of Connecticut

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

MR. RICHARD A. SPECIALE

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IA 99-019

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Richard A. Speciale (Mr. Speciale) was formerly Director, and Radiation Safety Officer of Special Testing Laboratories, Inc. (Special Testing or Licensee). Special Testing is the holder of Byproduct Nuclear Material License No. 06-30361-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler Electronics Laboratories, Campbell Pacific Nuclear, Humbolt Scientific, Seamen Nuclear, or Soiltest nuclear gauges. The license was issued on August 6, 1997, and is due to expire on August 31, 2007.

Mr. Speciale was also the Director of Testwell Craig Laboratories of Connecticut, Inc. (Testwell Craig), which previously held License No. 06-19720-01 authorizing possession and use of portable nuclear density gauges. This license was suspended on July 1, 1996, due to non-payment of fees.

II

On October 14, 15, and 16, 1998, and November 9-10, 1998, an NRC Region I inspector, accompanied by an investigator from the NRC Office of Investigations, conducted an inspection/investigation at the Licensee's facility in Bethel, Connecticut. During the inspection/

investigation, the NRC determined that: (1) portable gauges containing NRC-licensed material were routinely used by some Licensee employees who had not received the required training; (2) some Licensee employees were using the gauges without being provided the required personnel dosimeters; and (3) leak tests of the gauges were not being performed at the required frequency.

During the October inspection/investigation, Mr. Speciale was interviewed by the inspector and investigator. In that interview, Mr. Speciale, when questioned concerning the scope of the Licensee's program, informed the NRC that the Licensee possessed four Troxler portable gauges that were used by three or four authorized users, including himself. He also stated that he did not believe any of his field technicians were operating gauges without training.

The NRC inspector and investigator returned to the facility on November 9-10, 1998, to complete the inspection/investigation, at which time the NRC was provided records indicating that nine individuals had received manufacturer's training on October 29, 1998, which was subsequent to the NRC's October 1998 visit. Mr. Speciale was questioned as to why nine individuals had received such training when he had previously stated that gauges were used by three or four users. Although Mr. Speciale initially maintained that only three individuals were using four gauges, he subsequently stated, and available records showed, that Speciale Testing possessed 13 gauges, and these gauges were used by as many as 14 individuals. Also, during the November inspection/investigation, seven gauge users stated that they used portable gauges without formal training for periods ranging from several weeks to four years prior to October 29, 1998. The NRC also learned, based on discussions with Mr. Speciale, that there were periods when gauge users were not provided personnel dosimeters. Further, three gauge

users stated that they operated portable gauges without wearing "film badges" for periods ranging from one to several months prior to October 1998. When questioned as to why individuals were using gauges without training or personnel dosimeters, Mr. Speciale indicated that the required training and dosimeters were not previously provided due to financial considerations, even though he continued to direct the individuals to use the gauges.

During a subsequent interview with the OI investigator on November 19, 1998, Mr. Speciale admitted that he "never stopped using nuclear gauges" after the Testwell Craig license was suspended for non-payment of fees and before the Special Testing license was issued. He stated that he failed to do so because Testwell Craig had "job commitments to finish." Thus, on numerous occasions between July 1, 1996, and August 6, 1997, Mr. Speciale continued to use these gauges without an NRC license.

As a result, prior to completion of the investigation, the NRC issued to Special Testing an Order Suspending License on December 23, 1998. The suspension order was rescinded on January 22, 1999, after Special Testing consented to issuance of a Confirmatory Order Modifying License that required, in part: (1) Mr. Speciale not be involved in NRC-licensed activities at Special Testing; and (2) Special Testing take corrective actions to prevent recurrence of the violations.

III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in

violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In addition, 10 CFR 30.10(a)(2) prohibits an individual from deliberately submitting to the NRC information that the individual submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. 10 CFR 30.9 requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Based on the inspection/investigation, the NRC has concluded that Mr. Speciale violated 10 CFR 30.10. Specifically, Mr. Speciale violated 10 CFR 30.10(a)(1) in that he deliberately caused the Licensee to violate NRC requirements by: (1) allowing untrained individuals to use gauges, contrary to License Condition 11.A of Special Testing's license; (2) not providing these individuals with the necessary dosimetry while they were using the gauges, contrary to License Condition 19 of Special Testing's license; (3) providing to the NRC inaccurate information concerning the number of gauges possessed and used by the Licensee and concerning the training of gauge users, contrary to 10 CFR 30.9; and (4) while in the position of Director of Testwell Craig, directing the use of gauges even though Testwell Craig's license had been suspended for nonpayment of fees and Special Testing's license had not yet been issued, contrary to Section III.A of the Order Suspending License issued to Testwell Craig. Mr. Speciale also violated 10 CFR 30.10(a)(2) by deliberately providing to the NRC inaccurate information concerning the number of gauges possessed and used by the Licensee and concerning the training of gauge users.

IV

Deliberately violating NRC requirements is of significant concern because the NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements. Directing untrained individuals to conduct NRC-licensed activities and not providing dosimetry is significant because misuse of gauges (which contain NRC-licensed material) could result in unnecessary radiation exposures to workers and members of the public. Moreover, deliberately providing false information to the NRC is significant because the Commission must be able to rely on its licensees to provide complete and accurate information. Given the above, it appears that Mr. Speciale is either unwilling or unable to comply with the Commission's requirements.

The NRC must be able to rely on the Licensee, and the Licensee employees, to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Speciale's action in deliberately violating Commission regulations, raises serious questions as to whether he can be relied upon to comply with NRC requirements and to provide or maintain complete and accurate information to the NRC, and raises questions about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Richard A. Speciale were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Richard A. Speciale be prohibited from any involvement in NRC-licensed activities for a period of five years. If Richard A. Speciale is currently involved in NRC-licensed

activities, Mr. Speciale must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Speciale is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Speciale's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Richard A. Speciale is prohibited from engaging in NRC licensed activities for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Richard A. Speciale is currently involved in NRC-licensed activities, Mr. Speciale must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the five year period of prohibition has expired, Mr. Speciale shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Speciale shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Speciale of good cause.

VI

In accordance with 10 CFR 2.202, Richard A. Speciale must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Speciale or other

person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Speciale if the answer or hearing request is by a person other than Mr. Speciale. If a person other than Mr. Speciale requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Speciale or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Mr. Speciale may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Dr. Malcolm R. Knapp
Deputy Executive Director for Regulatory
Effectiveness

Dated at Rockville, Maryland
this 21st day of July 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 15, 1997

IA 97-008

Mr. Derek Stephens
[Address removed pursuant
to 10 CFR 2.790]

SUBJECT: CONFIRMATORY ORDER

Dear Mr. Stephens:

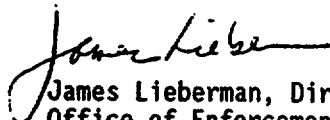
The enclosed Order is being issued because of your violation of 10 CFR 30.10, as described in the Order. The Order prohibits your involvement in NRC-licensed activities for a period of 3 years from the date of the Order. You agreed to the issuance of a Confirmatory Order in your signed statement dated March 11, 1997.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to me at (301) 415-2741.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter with your address removed will be placed in the PDR.

Sincerely,


James Lieberman, Director
Office of Enforcement

Docket No. 030-30691
License No. 35-26953-01

Enclosure: As Stated

cc: (see next page)

Mr. Derek Stephens

-2-

cc w/Enclosure:
State of Oklahoma

Mr. Loyd Barnett
Barnett Industrial X-Ray, Inc.
P.O. Box 1991
Stillwater, Oklahoma 74076

American Society of Nondestructive Testing, Inc.
ATTN: Technical Services Manager
1711 Arlingate Lane
P.O. Box 28518
Columbus, OH 43228-0518

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Derek F. Stephens

)
)
)
)

IA 97-008

CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Derek F. Stephens was employed as a radiographer by Barnett Industrial X-Ray, Inc. (Licensee). The Licensee is the holder of License No. 35-26953-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 and last renewed on March 21, 1996. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein.

II

On October 3, 1996, Mr. Stephens and a radiographer's assistant were conducting radiography activities at a refinery in Ponca City, Oklahoma. Mr. Stephens was the more senior of the two and had received training regarding his responsibilities for conducting activities in accordance with Licensee procedures and NRC regulations.

NRC regulations require, in part, that at all times during the conduct of radiography activities, each individual wear a direct reading pocket dosimeter, an alarm ratemeter, and either a film badge or a thermoluminescent dosimeter (TLD) (10 CFR 34.33). NRC regulations also require that a survey be made after each exposure to determine that the sealed source has been returned

to its shielded position (10 CFR 34.43). NRC regulations further require that whenever a radiographer's assistant uses radiographic exposure devices or conducts radiation surveys required by 10 CFR 34.43(b), and the radiographer's assistant shall be under the personal supervision of a radiographer, including the radiographer providing immediate assistance if required and the radiographer watching the assistant's performance of the operations (10 CFR 34.44).

During radiography activities on October 3, 1996, Mr. Stephens and the radiographer's assistant were assigned to complete two radiographs. The exposure device was placed on a scaffold approximately 6 feet above the ground with the drive cable controls located on the ground. After the second exposure, Mr. Stephens instructed the radiographer's assistant to crank the source back in and remove the source guide tube. Mr. Stephens then left to remove the barricades and did not watch the radiographer's assistant. Without a survey meter, the radiographer's assistant approached and disconnected the source guide tube. After disconnecting the source guide tube, the radiographer's assistant observed that the source was not fully retracted into the exposure device and was still exposed. The radiographer's assistant immediately left the vicinity of the source and informed Mr. Stephens. As a result of this event, the radiographer's assistant received a higher-than-normal exposure, but the exposure did not exceed regulatory limits.

In violation of NRC requirements, Mr. Stephens did not wear a direct reading pocket dosimeter, an alarm ratemeter, and either a film badge or a TLD. Further, Mr. Stephens did not effectively supervise the radiographer's

assistant to ensure that the radiographer's assistant conducted a proper survey, as required by 10 CFR 34.43(b). Because he was not properly supervising the radiographer's assistant, Mr. Stephens did not notice that when the radiographer's assistant approached the source, the radiographer's assistant could not have performed the proper survey because he did not have a survey meter.

NRC's investigation and inspection of this incident began on October 4, 1996. In a sworn, signed statement provided by Mr. Stephens to NRC's Office of Investigations (OI), Mr. Stephens stated he had been working for the Licensee since August 1995, and that he had received written and oral training, on-the-job training, and formal classroom training. He stated he had been a Level II radiographer for about 3 months and that he had been taught his responsibilities as a supervisor, including ensuring that the radiographer's assistant and others comply with safety and regulations. Further, he stated that both he and the radiographer's assistant forgot their personal dosimetry and realized it only when they discovered the source was not retracted. The results of NRC's investigation and inspection are documented in NRC Inspection Report 030-30691/96-01 dated December 23, 1996. A predecisional enforcement conference was conducted with the Licensee on January 6, 1997, and on February 24, 1997, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$4000 to the Licensee for the violations described in this Section II of this Order.

III

Based on its review of all available information, the NRC has concluded that Mr. Stephens, a former employee of the Licensee, engaged in deliberate misconduct in violation of 10 CFR 30.10 by causing the Licensee to be in violation of 10 CFR 34.33(a). Specifically, notwithstanding Mr. Stephens' assertion that he forgot his personal dosimetry, the NRC has concluded that Mr. Stephens deliberately failed to wear the required personal monitoring devices. This conclusion is based on the fact that: (1) Mr. Stephens was trained on using personal monitoring devices; (2) Mr. Stephens was provided personal monitoring devices, which he had in the Licensee's truck used in traveling to the work site; (3) prior to conducting licensed activities, Mr. Stephens is required to perform daily preoperational tests, such as checking the operability of the alarming ratemeter and zeroing the pocket dosimeter assigned to him; and (4) in an October 8, 1996 signed, written statement to OI, Mr. Stephens stated that he "knew it was [his] responsibility to ensure Kevin [Assistant Radiographer] had his dosimetry but did not do so."

In addition, the NRC has concluded that Mr. Stephens' failure to supervise, through direct observation, the radiographer's assistant as he approached the exposure device without a survey instrument and attempted to disassemble the equipment, represents careless disregard for regulatory requirements. Given his training and experience, Mr. Stephens knew or should have known of the requirements of 10 CFR 34.44 that a radiographer's assistant must be under the personal supervision of a radiographer, including the radiographer providing immediate assistance if required and the radiographer watching the assistant's

performance of operations. This conclusion is also supported by Mr. Stephens' October 8, 1996 signed, written statement to OI that he had been taught that his responsibility as a supervisor included insuring the assistants and others complied with safety and regulations.

These willful acts are significant because Mr. Stephens, the senior radiographer, failed to observe the safeguards designed to protect him, the radiographer's assistant, and others from unnecessary and potentially dangerous radiation exposures. These willful acts contributed to an unnecessary radiation exposure to the radiographer's assistant. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. Mr. Stephen's actions during this incident have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

IV

By letter dated February 19, 1997, the NRC described its conclusions to Mr. Stephens. The letter documented the NRC's understanding that Mr. Stephens did not wish to participate in further discussions of the above issues, and that Mr. Stephens agreed to a commitment that he be prohibited from engaging in NRC-licensed activities for a period of 3 years. Mr. Stephens signed a statement dated March 11, 1997, consenting to the issuance of this Order with the commitment as described in Section V below. Mr. Stephens further agreed in his signed statement, that this Order is to be effective upon issuance and that he has waived his right to a hearing.

I find that Mr. Stephens' commitments as set forth in Section V are acceptable and necessary and conclude that with the commitment the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Stephens' commitments be confirmed by this Order. Based on the above and Mr. Stephens' consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

Mr. Stephens is prohibited from engaging in NRC-licensed activities, including work conducted as an employee of an Agreement State licensee if the work is performed in a non-Agreement State or an area of exclusive federal jurisdiction, for a period of 3 years from the date of this order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Stephens of good cause.

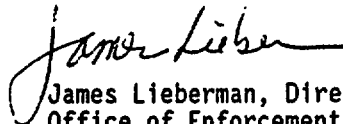
Any person adversely affected by this Confirmatory Order, other than Mr. Stephens, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011 and to Mr. Stephens. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 15th day of April 1997



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

March 31, 1999

EA 98-538

IA 98-066

Mr. Dale Todd, President
Roof Systems Design, Inc.
Monte Claro II
MK-1, Plaza 44
Bayamon, Puerto Rico 00961

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(INVESTIGATION REPORT NO. 2-1998-015)**

Dear Mr. Todd:

This refers to the correspondence between you and the NRC Region II Office on December 30 and 31, 1998, regarding the findings of NRC Investigation Report No. 2-1998-015 and your and Roof Systems Design's, Inc. agreement to the issuance of an Order. While you agreed to the issuance of an Order in a facsimile of December 31, 1998, you had reservations concerning the scope of the rights you were waiving. Subsequently, on January 11, 1999, we forwarded you a Confirmatory Order for your signature and explained its provisions. On February 18, 1999, R. W. Borchardt, Deputy Director of the Office of Enforcement, contacted you to further discuss the proposed Order, at which time you indicated agreement with its provisions and your intent to sign and facsimile the Order to the NRC.

To date, we have not received any written confirmation from you in this matter. Therefore, we are issuing you the enclosed Order. This Order is being issued due to your deliberate possession and use of radioactive material in the Commonwealth of Puerto Rico without a specific or general license issued by the NRC in violation of 10 CFR 30.3, 10 CFR 150.20, and 10 CFR 30.10. Under the terms of the Order, both you and Roof Systems Design, Inc. are (1) prohibited from engaging in NRC licensed activities for a period of one year and (2) required to notify the NRC at least five days prior to the first time that you engage in or exercise control over NRC licensed activities during a period of five years following the one year prohibition.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provisions of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.


Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement at (301) 415-2741.

D. Todd

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room (PDR).

Sincerely,



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Docket No. 150-00019
Maryland License No. MD-33-095-01 (Expired)

Enclosure: Order Prohibiting Involvement
in NRC Licensed Activities

cc w/enclosure:
Commonwealth of Puerto Rico
State of Maryland

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Dale Todd)	IA 98-066
)	EA 98-538
)	
and)	
)	
Roof Systems Design, Inc.)	Docket No. 150-00019
Bayamon, Puerto Rico 00961)	License No. MD-33-095-01(expired)

ORDER PROHIBITING INVOLVEMENT
IN NRC LICENSED ACTIVITIES

I

Mr. Dale Todd is employed as the President of Roof Systems Design, Inc. (RSDI). RSDI is a Pennsylvania Corporation, formerly doing business in Laurel, Maryland and now doing business in Bayamon, Puerto Rico. RSDI (a Maryland Licensee) possessed and used radioactive materials at its Laurel, Maryland facility under the authority of Maryland License No. MD-33-095-01, Amendment No. 2, issued by the Maryland Department of the Environment (MDE), Radioactive Materials and Compliance Division (RMCD) on May 31, 1994, pursuant to the Maryland Radiation Act, and in reliance on statements and representations made by RSDI. RSDI's Maryland license authorized RSDI to receive, acquire, possess and transfer, within the State of Maryland, Americium-241 (not to exceed 50 millicuries per source) contained in Troxler model 3216 moisture gauges used to locate areas of high moisture content in roof systems. On May 31, 1998, Maryland License No. MD-33-095-01, Amendment No. 2, expired.

On April 23, 1998, the Nuclear Regulatory Commission (NRC) was notified by MDE/RMCD, that Mr. Todd had moved RSDI equipment and operations to the Commonwealth of Puerto Rico, an area within the NRC's jurisdiction. An investigation by the NRC Office of Investigations (OI) was initiated on May 8, 1998, to determine whether Mr. Todd and RSDI were in unauthorized possession of moisture gauges containing byproduct material, without a specific or general license issued by the NRC. Based on the evidence developed, OI determined that RSDI willfully possessed and used Troxler moisture gauges, containing byproduct material, in the Commonwealth of Puerto Rico without a specific or general license issued by the NRC. Specifically, on May 8, 1998, Mr. Todd and RSDI were found to be in possession of four Troxler Model Number 3216 moisture gauges in Puerto Rico, each containing approximately 40 millicuries of Americium-241 without having obtained an NRC license, in violation of 10 CFR 30.3 and 10 CFR 150.20. In addition, based on statements Mr. Todd made to OI, the gauges were used at job sites in Puerto Rico, including Searle Pharmaceutical in 1992 and Ft. Buchanan and Intel in Las Piedras in September 1997 without a specific or general license issued by the NRC, in violation of 10 CFR 30.3.

Mr. Todd acknowledged to OI that he was aware that the jobs in Puerto Rico required an NRC license and that one had not been obtained. In addition, Mr. Todd told OI that he and RSDI also conducted licensed activities in New Jersey, Pennsylvania, and Virginia, areas of NRC jurisdiction, without a specific or general NRC license.

On May 12, 1998, Confirmatory Action Letter (CAL) 2-98-003 was sent to Mr. Todd confirming that he agreed to transfer the four RSDI gauges to an authorized recipient by June 7, 1998.

Mr. Todd confirmed that the four moisture gauges were transferred to an authorized recipient by letter to Mr. Mark Lesser of the NRC, dated June 11, 1998. In addition to the May 12, 1998 CAL, the NRC also sent Mr. Todd a December 30, 1998 letter that informed him of the terms of the Confirmatory Order and that requested Mr. Todd to inform the NRC whether he consented to the issuance of the Order. Mr. Todd informed the NRC in a facsimile dated December 31, 1998, that he understood the terms of this Order and that he consented to the issuance of the Order; however, he expressed reservation concerning the scope of the rights he was waiving. By letter dated January 11, 1999, a Confirmatory Order was forwarded to Mr. Todd for his signature. Subsequently, on February 18, 1999, NRC contacted Mr. Todd to discuss the proposed Order, at which time he indicated agreement with its provisions and his intent to sign and facsimile the Order to the NRC. To date, no response has been received from Mr. Todd.

III

The Commission's regulations in 10 CFR 30.3 specify that, except for persons exempt as provided in Parts 30 or 150, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued by the NRC. In accordance with 10 CFR 150.20 (a), any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted an NRC general license to conduct the same activity in a non-Agreement State, provided the provisions of 10 CFR 150.20 (b)(1) have been met. Pursuant to 10 CFR 150.20(b)(1), persons engaging in such activity must file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States", with the Regional Administrator of the appropriate NRC regional office. Based on the facts set forth above in Part II, and the fact that Mr. Todd and RSDI never filed an application for an specific license or obtained a

general license under 10 CFR Part 150 by filing NRC Form 241 and/or maintaining a Maryland office, the NRC has concluded that Mr. Todd and RSDI willfully possessed and used Troxler moisture gauges, without a specific or general license issued by the NRC, in violation of 10 CFR 30.3. Furthermore, based on the facts that (1) Mr. Todd told OI that he knew that his and RSDI's activities in Puerto Rico required an NRC license and (2) Mr. Todd chose not to obtain an NRC license, the NRC has concluded that Mr. Todd and RSDI have engaged in deliberate misconduct, in violation of 10 CFR 30.10. Both Mr. Todd's and RSDI's past activities raise serious doubt as to whether they can be relied upon to comply with NRC requirements in the future.

Mr. Todd's and RSDI's failure to obtain a specific or general license resulted in the NRC being uninformed that activities involving the use of radioactive materials were being conducted in areas of NRC jurisdiction. Because of Mr. Todd's and RSDI's failure to file NRC Form 241, the NRC was denied the opportunity to inspect the licensee's facility and to verify that radioactive materials were being safely used and stored. Furthermore, the NRC was informed by the State of Maryland that Mr. Todd and RSDI committed a similar violation as a Maryland Licensee. Specifically, RSDI was issued a civil penalty in 1987 by the State of Maryland for the use of radioactive material without a license.

In view of the foregoing, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with NRC requirements and that the health and safety of the public would be protected if Mr. Todd or RSDI were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Todd and RSDI be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Mr. Todd and RSDI are required to notify the NRC of their first involvement in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81,161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, 10 CFR 30.10 and 10 CFR 150.20, IT IS HEREBY ORDERED, THAT:

1. For a period of one (1) year from the date of this Order, Mr. Dale Todd and RSDI are prohibited from engaging in or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which require a specific or general license issued by the NRC including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

2. At least five (5) days prior to the first time that Mr. Dale Todd and/or RSDI engage in or exercise control over NRC-licensed activities, during a period of five (5) years following the one year prohibition stated in Section IV.1 above, the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, shall be notified in writing of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Mr. Dale Todd and/or RSDI understand the applicable NRC requirements and are committed to compliance with NRC requirements. Mr. Dale Todd and/or RSDI also should provide a basis as to why the

Commission should have confidence that Mr. Dale Todd and/or RDSI will now comply with applicable NRC requirements.

The Director, Office of Enforcement, U. S. Nuclear Regulatory Commission may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Dale Todd and/or RSDI of good cause.

V

In accordance with 10 CFR 2.202, Mr. Todd and RSDI must, and any person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Todd and RSDI or other persons adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 23T85, Atlanta, Georgia 30303-3415 and to Mr. Todd, if the answer or

hearing request is by a person other than Mr. Todd. If a person other than Mr. Todd requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Todd or RSDI or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Malcolm R. Knapp
Deputy Executive Director
for Regulatory Effectiveness

Dated this 31 day of March 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 26, 1999

IA 99-053

Mr. John Urban
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: CONFIRMATORY ORDER REQUIRING NOTICE TO CERTAIN EMPLOYERS
AND PROSPECTIVE EMPLOYERS AND NOTIFICATION OF NRC OF
CERTAIN EMPLOYMENT IN NRC-LICENSED ACTIVITIES (EFFECTIVE
IMMEDIATELY)

Dear Mr. Urban:

The enclosed Confirmatory Order is being issued because of your deliberate misconduct in violation of 10 CFR 30.10 of the Commission's regulations, as described in the Confirmatory Order. Your deliberate misconduct caused your employer, MidMichigan Medical Center, an NRC licensee, to be in violation of 10 CFR Parts 30 and 35 requirements. The Office of Investigations report synopsis was sent to you by letter dated September 7, 1999. In that letter, you were provided with an opportunity to respond to the apparent violations and/or request a predecisional enforcement conference. That conference was held on September 17, 1999, in the NRC Region III office.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of the Confirmatory Order may also subject the person to a civil monetary penalty. Additionally, all final NRC documents, including the final OI investigation report, are official agency records, and may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information in accordance with the FOIA.

Questions concerning the Confirmatory Order may be addressed to me at (301) 415-2741. Also attached is the Notice of Violation issued to MidMichigan Medical Center as a result of your deliberate actions.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, and its enclosure will be placed in the NRC Public Document Room.

Sincerely,

A handwritten signature in black ink that reads "R. W. Borchardt".

R. W. Borchardt, Director
Office of Enforcement

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

John Urban

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IA 99-053

CONFIRMATORY ORDER REQUIRING NOTICE TO CERTAIN EMPLOYERS
AND PROSPECTIVE EMPLOYERS AND NOTIFICATION OF NRC OF
CERTAIN EMPLOYMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. John Urban is currently involved in NRC-licensed activities as an employee at MidMichigan Medical Center, Midland, Michigan. MidMichigan Medical Center (MMC or Licensee) is the holder of Byproduct Material License No. 21-01549-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35 and last renewed on February 3, 1999. The license authorizes possession and use of radioactive material for medical purposes in accordance with the conditions specified therein.

II

On June 1, 1999, the Licensee reported a misadministration involving a patient undergoing treatment for thyroid carcinoma who received approximately 100 millicuries of iodine-131 instead of 150 millicuries as prescribed. The misadministration occurred on May 24, 1999, when the chief technologist, Mr. John Urban, administered a 103 millicurie dose of iodine-131 without first verifying that the dosage was in accordance with the written directive. The Licensee's quality management program dated January 20, 1992, requires any individual administering therapy dosages to review the written directive before administering the dosage. After the patient left MMC, Mr. Urban looked at the written directive and realized that there was an inconsistency between what the patient received and what had been prescribed. Mr. Urban did not attempt to contact the physician or anyone else regarding this inconsistency. He then

altered the written directive dosage from 150 millicuries to 100 millicuries. Two days later, on May 26, 1999, the prescribing physician discovered the misadministration when he realized that the written directive had been altered to reflect the dose administered. Initially, Mr. Urban denied altering the written directive to MMC and the NRC inspector. The Licensee reported the misadministration to the NRC on June 1, 1999. An NRC inspection was conducted on June 7-8, 1999, and the Office of Investigations (OI) initiated an investigation on June 14, 1999. The OI report concluded that Mr. John Urban engaged in deliberate misconduct by altering a written directive, by providing incomplete and inaccurate information to an NRC inspector, and thereby, in part, causing MMC to file an untimely misadministration report. In addition, Mr. Urban demonstrated careless disregard for license requirements when he did not review the written directive prior to administering a therapeutic dosage. During the predecisional enforcement conference held on September 17, 1999, Mr. Urban indicated that on May 24, 1999, he believed, based on the patient's statement and the dose ordered, that he had administered the correct dosage.

III

The Commission's regulation in 10 CFR 30.10 requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation issued by the Commission. Based on the facts as set forth above, the staff concluded that Mr. Urban engaged in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 30.9 and 35.33. Mr. Urban provided incomplete and inaccurate information to an NRC inspector and failed to alert MMC management to the misadministration which denied them the opportunity to submit a timely misadministration report to NRC. The NRC

must be able to rely on the Licensee and its employees to comply with NRC requirements. Mr. Urban's actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and provide complete and accurate information to the NRC.

The NRC staff sent a letter dated November 10, 1999, to Mr. Urban containing the proposed terms of this Confirmatory Order which are set out in Section IV of this Confirmatory Order. The proposed terms are that Mr. Urban is required to provide a copy of this Confirmatory Order to any current employer (other than MMC) and future employer and is required to notify the NRC of any new employment involving licensed activities for a period of two years. The NRC staff requested Mr. Urban to review the proposed items and indicate his agreement with those terms by signing an enclosed waiver. By facsimile dated November 19, 1999, Mr. Urban transmitted the signed waiver indicating agreement with the provisions, the issuance of the Confirmatory Order confirming the provisions and waiving his right to have a hearing on such a Confirmatory Order.

I find that Mr. Urban's commitments as agreed to in the facsimile of November 19, 1999, are acceptable and necessary and conclude that with these commitments public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Urban's commitments in the November 19, 1999 facsimile be confirmed by this Confirmatory Order. As stated above, Mr. Urban has agreed to this action. Pursuant to 10 CFR 2.202, I have also determined, based on Mr. Urban's consent and on the significance of the conduct described above, that public health and safety require that this Confirmatory Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Should John Urban seek employment involving NRC-licensed activities during the two year period from the date of this Confirmatory Order, Mr. Urban shall provide a copy of this Confirmatory Order to the prospective employer at the time that Mr. Urban is soliciting or negotiating employment so that the person is aware of the Confirmatory Order prior to making an employment decision. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. For a two year period from the date of this Confirmatory Order, John Urban shall, within 10 business days of his acceptance of an employment offer involving NRC-licensed activities, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer.
3. If John Urban is currently involved in NRC-licensed activities at any employer other than MidMichigan Medical Center, Mr. Urban shall, within 30 days of the date of this Confirmatory Order, provide a copy of this Confirmatory Order to any such employer

and provide notice to the Director, Office of Enforcement, at the address provided above, of the name, address, and telephone number of any such employer.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Urban of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Mr. Urban, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and Mr. Urban. If a person other than Mr. Urban requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS CONFIRMATORY ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



R. W. Borchardt, Director
Office of Enforcement

Dated this 26th day of November 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 27, 1997

IA 97-050

Mr. Lonnie Randall Wilson
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) (OI REPORT NO. 3-94-067)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued as a consequence of your deliberate falsification of information which you provided on an application to obtain access authorization at American Electric Power Company's D.C. Cook Nuclear Plant. The Order prohibits your involvement in NRC-licensed activities for a period of five years.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

Questions concerning the Order should be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in cursive script that reads "James Lieberman".

James Lieberman, Director
Office of Enforcement

Enclosure: Order Prohibiting Involvement in
NRC-Licensed Activities (Effective Immediately)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

MR. LONNIE RANDALL WILSON

IA 97-050

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Lonnie Randall Wilson, a contract insulator, was employed at American Electric Power Company's (Licensee) D.C. Cook Nuclear Plant facility. The Licensee is the holder of License Numbers DPR-58 and DPR-74, issued by the Nuclear Regulatory Commission (NRC) on October 25, 1974, and December 23, 1977, respectively. These licenses authorize the operation of D.C. Cook Nuclear Plant Units 1 and 2 in accordance with the conditions specified therein. The facility is located on the Licensee's site in Bridgman, Michigan.

II

In accordance with 10 CFR 73.56, nuclear power plant licensees must conduct access authorization programs for individuals seeking unescorted access to protected and vital areas of the plant with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. The unescorted access authorization program must include a background investigation which, at a minimum, verifies a person's true identity, verifies an individual's character and reputation, and develops

information concerning an individual's employment and criminal histories. The decision to grant unescorted access authorization must be based on the licensee's review and evaluation of all pertinent information.

In order to be certified for unescorted access at the D.C. Cook Nuclear Plant as a contractor employee, Mr. Wilson completed a security background screening questionnaire on December 11, 1993 and answered "no" to questions regarding whether he had ever tested positive for drugs or ever been removed or denied access to a nuclear power plant. Contrary to this response, on July 23, 1991, Mr. Wilson had been denied access to the Turkey Point Nuclear Station for testing positive for illegal drugs. In addition, Mr. Wilson gained unescorted access to the James A. Fitzpatrick Nuclear Power Plant by falsifying his New York Power Authority (NYPA) Personal History Questionnaire for Unescorted Access, dated January 7, 1992.

By deliberately falsifying information on his background questionnaire to gain unescorted access to the D.C. Cook Nuclear Plant, Mr. Wilson was granted unescorted access during the periods February 11, 1994, through April 22, 1994, and September 19, 1994, through November 11, 1994. On November 16, 1994, Mr. Wilson returned to the Fitzpatrick Plant and again applied for access. Mr. Wilson deliberately falsified information on his NYPA Personal History Questionnaire for Unescorted Access dated November 16, 1994 in order to again be granted unescorted access at this plant. During the review process, Fitzpatrick security discovered that Mr. Wilson had tested positive for drug use at Turkey Point, and that Florida Power and Light Company had denied him unescorted access at that plant. When Mr. Wilson was interviewed

on November 18, 1994 by the Access Control Coordinator at Fitzpatrick, in reference to his background investigation, Mr. Wilson commented to the Access Control Coordinator that "it took three plants to finally catch him, he's made 30-40,000 dollars by lying and would do it again, I'm not the only one doing this." Although Mr. Wilson later denied making the statement that he would falsify access forms in the future to gain unescorted access to nuclear power plants, the Access Control Coordinator at Fitzpatrick documented, by an undated memorandum, that Mr. Wilson informed him that Mr. Wilson would lie again to gain unescorted access to nuclear power plants.

Mr. Wilson was prosecuted in the Western Judicial District of Michigan for making false statements on his access application at the D.C. Cook Nuclear Plant. On March 10, 1997, Mr. Wilson was sentenced by Judge Robert H. Bell, U.S. District Court in Grand Rapids, Michigan to a 2-year probation, a \$2,000 fine, and other penalties for making false statements on his access application at D.C. Cook.

III

Based on the above, the NRC has concluded that Mr. Wilson engaged in deliberate misconduct by falsifying information contained in a background questionnaire by not stating that he failed a fitness-for-duty drug test and that he had been denied access to the Turkey Point Nuclear Power Station in July 1991. This falsified information was relied upon, in part, in granting Mr. Wilson unescorted access to the D.C. Cook Nuclear Plant facility on two separate occasions in 1994, and at the Fitzpatrick Plant prior to 1994. Mr.

Wilson's actions constitute a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately providing information to a licensee or contractor that the individual knows is inaccurate or incomplete in some respect material to the NRC. The information that Mr. Wilson provided regarding his background information was material because, as indicated above, licensees are required to consider such information in making unescorted access determinations in accordance with the requirements of 10 CFR 73.56.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Wilson's actions in deliberately providing false information to the Licensee constitute deliberate violations of Commission regulations, and his doing so on multiple occasions raise serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC Licensees and their contractors in the future. Mr. Wilson's conduct raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Wilson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Wilson be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. In addition, if Mr. Wilson is

currently involved with another licensee in NRC-licensed activities, Mr. Wilson must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Wilson is required to notify the NRC of his employment in NRC-licensed activities for a period of five years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Wilson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161c, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Lonnie Randall Wilson is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. For the purposes of this Order, licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20

2. For a period of five years after the five year period of prohibition has expired, Mr. Wilson shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Wilson shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission shall have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Wilson of good cause.

V

In accordance with 10 CFR 2.202, Mr. Wilson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation,

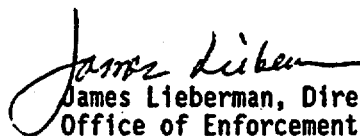
specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Wilson or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351, and to Mr. Wilson, if the answer or hearing request is by a person other than Mr. Wilson. If a person other than Mr. Wilson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Wilson or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Wilson may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 27th day of June 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 27, 1995

IA 95-022

Marc W. Zuverink
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC (OI REPORT NO. 3-94-061)

Dear Mr. Zuverink:

The enclosed Order is being issued as a result of an investigation by the NRC Office of Investigations (OI) which found that you stole NRC-licensed material, hydrogen-3 (tritium), from the facility of Cammenga Associates, Holland, Michigan, and that you gave the material to members of the public. In doing so, you deliberately acquired, possessed, and transferred NRC-licensed material without an NRC license and needlessly exposed members of the public to radiation. The violation is fully described in the enclosed Order.

The Order prohibits your involvement in NRC-licensed activities for a period of ten years from the date of the Order. In addition, for a period of five years after the ten year prohibition period, the Order also requires you to notify the NRC within 20 days of your employment or involvement in licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order is subject to criminal prosecution as set forth in that section.

You are required to respond to this Order and should follow the instructions specified in Section VI of the Order when preparing your response. Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your address removed, and the enclosure will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy information or proprietary information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Marc W. Zuverink

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The responses directed by this letter and the enclosed Order are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Action of 1980, Public Law No. 96-511.

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Docket No. 030-33009
License No. 21-26460-01

Enclosure:
Order Prohibiting Involvement in NRC
Licensed Activities

cc w/enclosure:
Edith A. Landman
Assistant U.S. Attorney
Michael P. McDonald
Attorney for Mr. Zuverink
Cammenga Associates, Inc.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MARC W. ZUVERINK
Holland, Michigan

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IA 95-022

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC

I

Cammenga Associates, Inc. (Cammenga or Licensee) holds Byproduct Material License No. 21-26460-01 issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on September 27, 1993. The license authorizes the use of byproduct material, hydrogen-3 (tritium), in sealed vials for the production of tritium radioluminescent devices. The license is due to expire on January 31, 1998. From July 29, 1994, to September 16, 1994, Marc W. Zuverink was contracted to Cammenga through a temporary hiring service.

II

The Licensee trained Mr. Zuverink as a radiation worker. The training included a discussion of potential sanctions against employees who misused, mishandled, or stole radioactive material. Mr. Zuverink's answers on a comprehensive written exam given by the Licensee indicate that he was aware of potential civil and criminal penalties for employees who deliberately violate federal regulations or license requirements governing the use of tritium. The radiation safety training allowed Mr. Zuverink to enter the Licensee's restricted area and to have access to licensed material as part of the process

of manufacturing tritium illuminated compasses under contract to the United States military.

III

On September 30, 1994, the Licensee undertook an inventory of NRC-licensed material in its possession. Upon completion, the inventory determined that 1099 vials, containing a total of 49.11 curies of tritium, were missing. The Licensee notified the NRC and the Ottawa County, Michigan, Sheriff's Department. An inspection was conducted by NRC Region III personnel on October 7 and 8, 1994, to evaluate the radiological consequences of the missing material and to monitor the retrieval of the tritium sources. Investigations were conducted by the NRC Office of Investigations (OI), the Ottawa County Sheriff's Department, and the Department of Defense Criminal Investigation Service.

Mr. Zuverink admitted to the investigators that he took tritium vials and completed compasses with tritium inserts from the Licensee on more than one occasion. The largest theft apparently took place on September 10, 1994, when he took nine bags of vials from the Licensee, each bag containing 100 vials of tritium, 50 millicuries per vial. Mr. Zuverink stated that he gave the tritium vials and compasses to various members of the public, including approximately 100 vials (5,000 millicuries) to a teenage skateboarder whom he did not know. Mr. Zuverink also admitted that he crushed a tritium vial on a kitchen table at his home in the presence of another individual. This action contaminated the tabletop and caused the other individual to receive a minor

tritium uptake (internal tritium contamination). Minor contamination of a countertop and tables was also found in a restaurant where Mr. Zuverink had given one or more vials to another member of the public. Mr. Zuverink was able to arrange for the return of 548 tritium vials, leaving 551 vials unaccounted for (401 vials at 50 millicuries, 57 vials at 25 millicuries, and 93 vials at 5 millicuries).

OI also found that Mr. Zuverink made false statements to an OI investigator and an NRC inspector during an interview on October 7, 1994. During that interview, Mr. Zuverink stated that he never had any tritium vials at his home, had given tritium vials to only two individuals, and had stolen only one compass. These statements were contradicted by Mr. Zuverink's sworn testimony on October 17, 1994.

Mr. Zuverink's acquisition, possession and transfer of NRC-licensed material, tritium, is a deliberate violation of 10 CFR 30.3, "Activities requiring license." 10 CFR 30.3 requires that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license. Mr. Zuverink was not authorized in a specific or general license to acquire, possess or transfer byproduct material, including tritium.

Pursuant to a plea arrangement dated February 3, 1995, Mr. Zuverink agreed to plead guilty in the U. S. District Court for the Western District of Michigan to one criminal count of violating 18 U.S.C. 641, a misdemeanor. Specifically, the agreement describes the charge as stealing compasses,

containing the radioactive substance tritium, which belonged to the United States and which were manufactured under contract for the United States. As a result, on April 18, 1995, a judgment was entered whereby Mr. Zuverink was sentenced to serve one year in federal custody, pay a fine of \$500, make restitution to Cammenga in the amount of \$1,000, and pay a \$25 special assessment to the court.

IV

Based on the above, the NRC concludes that Marc W. Zuverink engaged in deliberate misconduct that constituted a violation of 10 CFR 30.3 when he stole and transferred NRC-licensed material. The NRC must be able to rely on its licensees, and the employees of licensees and licensee contractors, to comply with NRC requirements, including the requirement that licensed material cannot be acquired, possessed or distributed without a specific or general license. The deliberate violation of 10 CFR 30.3 by Marc W. Zuverink, as discussed above, has raised serious doubt as to whether he can be relied on to comply with NRC requirements.

Consequently, I lack the requisite assurance that Marc W. Zuverink will conduct licensed activities in compliance with the Commission's requirements or that the health and safety of the public will be protected if Marc W. Zuverink were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that for a period of ten years from the date of this Order, Marc W. Zuverink be prohibited from any involvement in NRC-licensed activities for either: (1) an

NRC licensee, or (2) an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20. In addition; for a period of five years commencing after the ten year period of prohibition, Mr. Zuverink must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Zuverink's compliance with the Commission's requirements and his understanding of his commitment to compliance.

V

Accordingly, pursuant to sections 81, 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Marc W. Zuverink is prohibited for a period of ten years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. For a period of five years, after the above ten year period of prohibition has expired, Marc W. Zuverink shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of

Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Marc W. Zuverink shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Zuverink of good cause.

VI

In accordance with 10 CFR 2.202, Marc W. Zuverink must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 45 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Zuverink or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20055, and to the Regional Administrator, NRC Region III, 801

Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Marc W. Zuverink shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Zuverink of good cause.

VI

In accordance with 10 CFR 2.202, Marc W. Zuverink must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 45 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Zuverink or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20055, and to the Regional Administrator, NRC Region III,

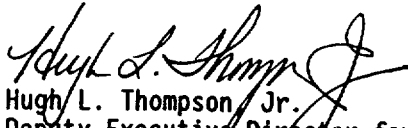
801 Warrenville Road, Lisle, Illinois 60632-4531, if the answer or hearing request is by a person other than Mr. Zuverink. If a person other than Mr. Zuverink requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by the Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Zuverink or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Since Mr. Zuverink is currently in Federal custody, if a hearing is requested, the Commission will not act on the hearing request until Mr. Zuverink is released from Federal custody. If Mr. Zuverink requests a hearing, the hearing request will not be granted unless Mr. Zuverink: (1) notifies the Secretary, U.S. Nuclear Regulatory Commission, at the address given above, within 20 days of his release from Federal custody, that he has been released from Federal custody; and (2) provides in the notice his then-current address where he can be contacted and a statement that he continues to desire the hearing. A copy of the notice shall also be sent to the Director, Office of Enforcement, and the Assistant General Counsel for Hearings and Enforcement, at the address given above.

In the absence of any request for hearing, the provisions specified in Section V above shall be effective and final 45 days from the date of this Order without further order or proceedings. In the event that Mr. Zuverink makes the sole request for a hearing and fails to comply with the notification

requirements above, the provisions specified in Section V above shall be effective and final 20 days after he is released from Federal custody.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 27 day June 1995

B- NOTICE OF VIOLATIONS



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-3415

October 1, 1999

IA-99-46

Mr. Walter T. Anderson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION AND EXPIRATION OF LICENSE

Dear Mr. Anderson:

The Nuclear Regulatory Commission (NRC) received a letter dated August 25, 1999, from the Carolina Power and Light Company (CP&L) informing us that they no longer have a need to maintain your operating license for the Brunswick Steam Electric Plant. We also received a letter dated September 2, 1999, from CP&L containing information about your confirmed positive test for tetrahydrocannabinol (THC), copies of each letter are enclosed. We plan to place both of the referenced letters from CP&L in your 10 CFR Part 55 docket file.

In accordance with 10 CFR 55.55(a), the determination by your facility that you no longer need to maintain a license has caused your license, OP-20977-1, to expire as of August 10, 1999. In addition, the following violation is being issued on your docket:

10 CFR 55.53(j) prohibits the use of marijuana and prohibits the licensee from performing activities authorized by a license issued under 10 CFR Part 55 while under the influence of marijuana. "Under the influence" is defined in 10 CFR 55.53(j) to mean that the "licensee exceeded, as evidenced by a confirmed positive test, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR Part 26, Appendix A, of this chapter, or as established by the facility licensee."

Contrary to the above, the licensee violated 10 CFR 55.53(j) as evidenced by the following:

- a. The licensee used marijuana as evidenced by a confirmed positive test for that drug resulting from a urine sample submitted on July 28, 1999.
- b. The licensee performed licensed duties from July 28 to August 3, 1999, following the submission of a urine sample which indicated he was under the influence of marijuana.

This is a Severity Level III violation (Supplement I).

The purpose of the Commission's Fitness-for-Duty requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The use of illegal drugs is a serious matter which undermines the special trust and confidence placed in you as a licensed operator.

This violation is categorized as a Severity Level III violation in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, because the use of illegal drugs by licensed operators is a significant regulatory concern. Because your license has expired, you are not required to respond to the Notice of Violation at this time **unless you contest the violation**. Should you contest the Notice of Violation, a response is required within 30 days of the date of this letter addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator, NRC Region II, Atlanta Federal Center, 23T85, 61 Forsyth St., S. W., Atlanta, Georgia 30303, and marked, "Open by Addressee Only."

The purpose of this letter is to make clear to you the consequences of your violation of NRC requirements governing fitness-for-duty as a licensed operator, in accordance with 10 CFR Part 55. If you reapply for an operating license, you will need to satisfy not only the requirements of 10 CFR 55.31, but also those of 10 CFR 2.201, by addressing the reasons for the violation and the actions you have taken to prevent recurrence in order to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator and to abide by all fitness-for-duty and other license requirements and conditions.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are placed in the NRC Public Document Room (PDR). A copy of this letter, with your address removed, will be placed in the PDR unless you provide a sufficient basis to withdraw this violation within the 30 days specified above for a response to this Notice of Violation.

Should you have any questions concerning this action, please contact Mr. Harold O. Christensen of my staff. Mr. Christensen can be reached at either the address listed above or at telephone number (404) 562-4638.

Sincerely,



Bruce S. Mallett, Director
Division of Reactor Safety

Docket No. 55-20002
License No. OP-209771

Enclosures: As Stated

cc: w/o encls: See page 3

CERTIFIED MAIL NO. Z-353-112-086
RETURN RECEIPT REQUESTED



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

July 13, 1999

IA 99-026

Mr. Richard W. Dungan
HOME ADDRESS DELETED
UNDER 2.790

Dear Mr. Dungan:

SUBJECT: NOTICE OF VIOLATION
(NRC OI Investigation 1-98-046)

Dear Mr. Dungan:

This refers to an inspection conducted by the NRC on October 28, 1998, at a temporary job site of your employer, Allan A. Myers, Inc., in King of Prussia, Pennsylvania, as well as a subsequent investigation conducted by the NRC Region I Office of Investigations (OI). The investigation determined that you, as the Construction Manager for Allan Myers, violated NRC requirements. Specifically, you deliberately allowed an employee to use a Troxler gauge (containing 6.6 millicuries of cesium-137) without the employee (1) having completed the required training program; (2) having been designated as an authorized user by the Radiation Safety Officer (RSO); (3) being in the presence of an authorized user; and (4) wearing dosimetry during the use of the gauge. A synopsis of the OI investigation report was forwarded to you on May 19, 1999.

As noted in our May 19, 1999 letter, your actions were in violation of 10 CFR 30.10, "Deliberate Misconduct," which prohibits licensee employees from engaging in deliberate misconduct which causes the licensee to be in violation of any rule or regulation, or any term, condition or limitation of any license issued by the NRC. In that letter, we provided you an opportunity to respond to the apparent violation in writing, or to request a predecisional enforcement conference response. You provided a response, dated June 17, 1999, in which you indicated that it was never your intent to violate NRC requirements, noting that you operated the gauge once or twice a year and you neglected to keep current on regulations.

Notwithstanding your denial, the NRC maintains that the violation was deliberate. During your interview with OI, you admitted that you knew the individual had not completed the training program; was not under the supervision, or in the presence of, an authorized gauge user; and was not wearing a film badge. Also, you were previously the Radiation Safety Officer at the facility, and based on your experience and the related training you received, you should have understood those requirements. Therefore, given the deliberate nature of the violation, it is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The violation is described in the enclosed Notice of Violation.

You should be aware that NRC regulations allow the issuance of civil sanctions directly against unlicensed persons who engage in deliberate misconduct that causes a violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure or instruction. An Order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC licensed facilities. A violation of this regulation as set forth in 10 CFR 30.10, "Deliberate Misconduct", may also lead to criminal prosecution.

The NRC gave serious consideration to the issuance of an Order in this case. However, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation, and refrain from issuing such an Order, after considering that (1) you admitted during your interview with OI that you made a mistake; (2) you cooperated during the inspection and investigation; and (3) you were counseled and retrained by the company. Nonetheless, you should be aware that engagement in any similar wrongdoing in the future may result in more significant enforcement action. As a result of your actions, the NRC is issuing a Notice of Violation and Proposed Imposition of Civil Penalty to your employer. A copy of that action is enclosed.

You are not required to respond to the enclosed Notice. However, if you do provide a response, you should follow the instructions specified in the enclosed Notice when preparing your response.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

If you have any questions or comments, please contact Ms. Betsy Ullrich at (610) 337-5040.

Sincerely,



Hubert J. Miller
Regional Administrator

Enclosures:

1. Notice of Violation
2. Notice of Violation and Proposed Imposition of Civil Penalty to Allan A. Myers, Inc.
(EA 99-042)

cc w/encs:

Commonwealth of Pennsylvania

ENCLOSURE 1

NOTICE OF VIOLATION

Mr. Richard W. Dungan

IA 99-026

During an investigation conducted by the NRC Office of Investigations (OI) at an Allan A. Myers, Inc. temporary job site in King of Prussia, Pennsylvania, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.10, "Deliberate Misconduct," prohibits licensee employees from engaging in deliberate misconduct which causes the licensee to be in violation of any rule or regulation, or any term, condition or limitation of any license issued by the NRC.

Condition 11.A. of License No. 37-28555-01 requires that licensed material be used by, or under the supervision of and in the presence of the corporate RSO or individuals who had successfully completed the manufacturer's training program for gauge users and who had been designated in writing by the Radiation Safety Officer (RSO).

Condition 19 of License No. 37-28555-01 requires, in part, that the licensee shall conduct its program in accordance with statements, representations, and procedures contained in the application dated June 23, 1995. Item 10.1 of the June 23, 1995 application, Personnel Monitoring Procedures, requires that Troxler Electronic TLD badges be worn when using the gauge.

Contrary to the above, on October 28, 1998, you deliberately caused the licensee to be in violation of NRC requirements. Specifically, you deliberately allowed an employee to use a Troxler gauge (containing 6.6 millicuries of cesium-137) without the employee (1) having completed the required training program; (2) having been designated as an authorized gauge user by the RSO; or (3) being in the presence of an authorized gauge user; and (4) wearing dosimetry during the use of the gauge. (01013)

This is a Severity Level III violation (Supplement VII).

The NRC has concluded that the reason for the violation and your corrective actions already adequately address the violation and a response is not required. However, if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Enclosure 1

Because your response, if any, will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, or proprietary, information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy).

Dated at King of Prussia, Pennsylvania
this 13th day of July 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

July 23, 1999

IA 99-036

Mr. Kenneth F. Enoch
[HOME ADDRESS DELETED
PURSUANT TO 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION FOR FALSIFICATION OF RECORDS (NRC OFFICE
OF INVESTIGATIONS (OI) REPORT NO. 3-98-039)

Dear Mr. Enoch:

This letter refers to an NRC OI investigation completed on May 24, 1999. During this investigation, the NRC examined the facts and circumstances surrounding your apparent violation of NRC requirements on September 20, 1998. At that time, you were working for Detroit Edison (the licensee) as a licensed reactor operator at the Fermi Nuclear Station. A copy of the OI report synopsis is enclosed.

The NRC concluded that you violated 10 CFR 50.5, "Deliberate Misconduct," when you deliberately submitted to the licensee Surveillance Procedure 24.000.03, "Mode 5 Shiftly, Daily, and Weekly Surveillances," that you knew was not correct. This conclusion was based on the information developed during the investigation. Specifically, you initialed several items in surveillance 24.000.03 as satisfactory when, in fact, the security logs demonstrated that you did not enter the areas (ingress and egress limited to doors RBD-02 and 21) that house the equipment. Examples included status checks of fire doors to the division two battery chargers and the reactor building closed cooling water equipment area. Additionally, you recorded data or logged items as satisfactory when, in fact, the licensee demonstrated that you spent insufficient time¹ in the area to accomplish the required equipment checks. Examples included checks to verify: (1) parameters on the standby liquid control system; (2) functioning reactor coolant conductivity recorders; (3) regulator pressure to a floodup indicator; (4) status of several fire doors; and (5) no leakage between the reactor to drywell bellows.

As a nuclear plant employee -- and particularly as a licensed reactor operator -- you were entrusted with the responsibility to conduct activities assigned to you safely and in accordance with procedural requirements. Your actions in September 1998, did not adhere to these

¹ The licensee performed the rounds in the room several times and monitored the time required to accomplish the assigned task. The best time performed (without running) was slightly more than nine minutes. The ingress and egress logs for September 20, 1998, documented that you spent six minutes and 42 seconds in the area. This prompted the licensee to conclude that you spent insufficient time in the area to complete the assigned task.

standards. Public health and safety require that licensee employees comply with NRC regulations related to all work associated with nuclear power plant equipment and processes.

In determining the appropriate sanction for this case, the NRC gave considerable weight to: (1) your former position in the company; (2) the significant action (dismissal) that the licensee took against you; (3) the fact that you stated to the OI investigator that you now understand the consequences of your actions; (4) the isolated nature of your deliberate misconduct; and (5) the fact that you cooperated with OI. Therefore, after consultation with the Director, Office of Enforcement, I have been authorized to issue the enclosed Notice of Violation (Notice) to you based on your violation of the NRC's regulations regarding deliberate misconduct. In accordance with the NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions," the violation has been classified at Severity Level III. A copy of the applicable regulation is enclosed for your reference. However, should there be evidence of similar misconduct on your part in the future, you may be subject to further enforcement sanctions that could include an order prohibiting your involvement in NRC-licensed activities for a number of years.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, please include in your response why, in light of your actions in September 1998, the NRC should have confidence that you will adhere to NRC requirements should you be employed in the nuclear industry in the future.

In accordance with Section 10 CFR 2.790, "Rules of Practice," records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter, with your address removed, and your response will be placed in the PDR.

Questions concerning this letter may be addressed to Mr. David Hills, Chief, Operations Branch, at (630)829-9733 or Mr. Brent Clayton, Enforcement/Investigations Officer, at (630)810-4373

Sincerely,



J. E. Dyer
Regional Administrator

Enclosures: 1. Notice of Violation
2. Synopsis to OI Report No. 3-98-039
3. 10 CFR 50.5, Deliberate Misconduct

NOTICE OF VIOLATION

Mr. Kenneth F. Enoch

IA 99-036

During an investigation conducted by the NRC Office of Investigations completed on May 24, 1999, a violation of NRC requirements was identified. In accordance with NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions," the violation is listed below:

10 CFR 50.5 (a)(1), "Deliberate Misconduct," requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any condition of any license issued by the Commission.

The Fermi-2 Facility Operation License issued to Detroit Edison Company (Docket 50-341) on July 15, 1985, states, in part, in paragraph 2.C.(2) that the license is subject to the Technical Specifications contained in Appendix A of the license.

Fermi-2 Technical Specification 6.8.1.d, "Procedures and Programs," contained in Appendix A of the license requires, in part, that written procedures shall be established, implemented, and maintained covering surveillance activities of safety-related equipment.

Fermi 2 Plant Technical Surveillance Procedure 24.000.03, "Mode 5 Shiftly, Daily, and Weekly Surveillances," implemented the requirement of Technical Specification 6.8.1.d and stated, in part, at step 6.1.4 that for all surveillance items, unless specified by notes, the operator records data, as required, and if the surveillance item is satisfactory, initials the log.

Contrary to the above, on September 20, 1998, Mr. Kenneth F. Enoch, a licensed reactor operator at Detroit Edison's (the licensee) Fermi Nuclear Station engaged in deliberate misconduct that caused the licensee to be in violation of a condition of its license. Specifically, Mr. Enoch initialed several line items of the surveillance 24.000.03 log as satisfactory when, in fact, the security system demonstrated that Mr. Enoch did not enter the areas that house the equipment. Examples included checks to ensure that doors to the division two battery chargers and the reactor building closed cooling water equipment area were closed. Additionally, Mr. Enoch recorded data in the surveillance 24.000.03 log when, in fact, the security system demonstrated that Mr. Enoch spent insufficient time in the room to accomplish the required equipment checks. Examples included checks to verify: (1) parameters on the standby liquid control system; (2) functionality of reactor coolant conductivity recorders; (3) regulator pressure to a floodup indicator; (4) that several fire doors were unlocked; and (5) that no leakage existed between the reactor to drywell bellows.

This is a Severity Level III Violation (Supplement VII). (01013)

Pursuant to the provisions of 10 CFR 2.201, Mr. Kenneth F. Enoch is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region III, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790 (b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 23rd day of July 1999.

OI SYNOPSIS

This investigation was initiated on October 21, 1998, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if a licensed operator at the Fermi Power Plant deliberately falsified equipment surveillance logs.

Based upon the evidence developed during this investigation, it is concluded that the licensed operator deliberately falsified equipment surveillance logs.

50.5 Deliberate Misconduct.

- (a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:
 - (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or
 - (2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.
- (b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, Subpart B.
- (c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:
 - (1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or
 - (2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

July 20, 1999

IA 99-031

Neil Everson
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790(a)]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-98-017)

Dear Mr. Everson:

This refers to the investigation by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into information reported to the NRC by the Commonwealth Edison Company (ComEd) on February 24, 1998, that you brought a personal handgun into the personnel search area at the ComEd Zion Station. The information from ComEd indicated that at your request, another officer (who had operated the x-ray search equipment) did not make the required notifications that a firearm had been identified through the x-ray search process. A copy of the synopsis of the OI report is enclosed.

Based on the information developed during the OI investigation, ComEd's investigation, and the information provided in a letter from ComEd dated May 27, 1999, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in the investigation reports and the ComEd letter dated May 27, 1999.

In summary, you inadvertently brought a handgun to the Zion Station on February 24, 1998, which was detected during the x-ray search of your belongings. Upon detection of the handgun, the x-ray equipment operator failed to secure the weapon to prevent your access to it. You retrieved the weapon and asked the x-ray equipment operator to not report the incident because you feared your employment would be terminated for bringing a firearm to the Zion Station. With your assistance, the x-ray equipment operator erased the image of the handgun from the x-ray monitor. You then left the access control area of the Zion Station. You later returned to the personnel search area and again asked the x-ray equipment operator to not report the event. At that time you attempted to give cash to the x-ray equipment operator, which the operator did not accept. The procedures implementing the NRC-approved Zion security plan required the x-ray equipment operator to immediately notify the alarm station and a supervisor upon discovery of a firearm. The x-ray equipment operator did not make those immediate notifications because of your request. Your actions on February 24, 1998, placed ComEd in violation of the NRC-approved security plan for the Zion Station, and yourself in violation of 10 CFR 50.5, "Deliberate Misconduct. To emphasize the seriousness of your actions, the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III. Copies of 10 CFR 50.5 and the Enforcement Policy are also enclosed.

The NRC staff considered issuing an Order prohibiting your involvement in licensed activities as a result of your actions. However, the NRC has decided to issue the enclosed Notice of Violation after considering the circumstances of this case, including the facts that: (1) ComEd took action regarding your wrongdoing, including removing your unescorted access privileges at the Zion Station; (2) you are no longer employed at Zion and, (3) upon your termination of employment at the Zion Station, ComEd annotated in the Personnel Access Database System that your access to the facility was not terminated favorably. However, you should be aware that any similar future violation on your part may result in a more significant enforcement action.

Please feel free to contact Mr. James R. Creed of the NRC Region III Security Staff if you have any questions. Mr. Creed can be contacted at toll free telephone number 1-800-522-3025 or (630) 829-9500.

You are required to respond to this letter within 30 days of the date of this letter, and you should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (with your home address removed) will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,



J. E. Dyer
Regional Administrator

Docket Nos. 50-295; 50-304
License Nos. DPR-39; DPR-48

- Enclosures:
1. Notice of Violation
 2. OI Synopsis
 3. 10 CFR 50.5
 4. Letter to ComEd
 5. NRC Enforcement Policy

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION

Neil Everson
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790(a)]

IA 99-031

During an NRC investigation concluded on March 18, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(1) provides that an employee of a contractor at an NRC-licensed facility may not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee, to be in violation of any term, condition, or limitation of any license issued by the Commission.

10 CFR 50.5(c) provides that for the purposes of 10 CFR 50.5(a)(1), deliberate misconduct by a person means an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, or policy of a licensee.

Section 2.C.6 of Amendments 42 and 65 for Zion Operating Licenses No. DPR-39 and DPR-48 respectively, provide in part, that the licensee shall maintain in effect and fully implement all provisions of the Commission approved physical security plan, the Zion Station Security Plan (ZSSP), including amendments and changes made pursuant to the authority of 10 CFR 50.54(p).

Section 9.1 of the NRC-approved Zion Station Security Plan (ZSSP) requires, in part, that personnel and packages entering the protected area of the Zion Station be searched for firearms, explosives and incendiary devices to prevent unauthorized entry of these objects in the Zion Station Protected Area. ZSSP Section 9.1 further requires that search equipment operators must alert alarm station operators when there is a strong indication or confirmation of the presence of a firearm. Section 9.2.1 of the ZSSP provides, in part, that persons coming into the protected area of the Zion Station allow their handheld items to be searched. Section 9.3 of the ZSSP states, in part, that x-ray equipment and/or a physical search are used to search hand-carried items.

Section 3.1 of the ZSSP provides for procedures which implement the Plan. Section 3.5 of the ZSSP provides, in part, that post orders are issued for the use of security personnel in the accomplishment of their assigned duties and responsibilities.

Zion Station Post Order (ZSPO) No. 01, "Personnel Screen/Search," Revision No. 21, dated November 24, 1997, defines the term "contraband" as unauthorized items such as firearms, and defines "prohibited items" as including ammunition and component parts of weapons (e.g., barrels, frames, and triggers).

Section E.2 of ZSPO No. 01, provides, in part, that once an individual starts the search process (i.e., enters the first piece of detection equipment) the person must complete the entire search process. Section E.7. of ZSPO No. 01 requires that an individual, who has entered the search equipment envelope and decides to leave, must be instructed not to leave and the search completed.

ZSPO No. 02, "Hand Carried Items/Package Search," Revision No. 15, dated April 30, 1997, Section D.1.6, requires that any package determined to contain prohibited items or items which are suspicious or unidentifiable and could conceal a prohibited item, shall be immediately secured to prevent access by the carrier. Furthermore, any package which, during visual examination by x-ray machine, is determined to contain prohibited items shall remain within the x-ray machine or shall be taken under physical control. Additionally, supervision must be notified by radio or telephone. Section D.1.11 of ZSPO No. 02 further requires that a supervisor be notified when prohibited items are discovered.

Contrary to the above, on February 24, 1998, you caused Commonwealth Edison Company to be in violation of Section 2.C.6 of Operating License Nos. DPR-39 and DPR-48. Specifically, you were employed as a security officer by Burns Security, a contractor of the Commonwealth Edison Company at the Zion Nuclear Station, and you attempted to enter the protected area of the Zion Station with a handgun. The firearm was detected during the x-ray search of your belongings. The search equipment operator failed to secure the handgun to prevent your access to the weapon, and you removed the firearm from the belt of the x-ray equipment before the search process could be completed. You then asked the x-ray equipment officer to erase the image of the firearm from the x-ray monitor and you assisted the x-ray equipment operator in doing so. You also requested that a report of the incident not be made. As a result, the x-ray equipment operator did not immediately notify the alarm station that a firearm had been found. Furthermore, the x-ray equipment operator failed to immediately notify a supervisor by radio or telephone of the presence of a firearm. (01013)

This is a Severity Level III violation (Supplement III).

Pursuant to the provisions of 10 CFR 2.201, Mr. Neil Everson is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so

that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 20th day of July 1999.

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations (OI), Region III, on April 6, 1998, to determine whether security guards at Zion Generating Station (ZGS), Zion, Illinois, deliberately violated site security procedures.

Based upon evidence developed during this investigation, OI:RIII did not substantiate the allegation that a security guard at ZGS deliberately violated security procedures by bringing a weapon into ZGS. It was, however, determined that the same security guard deliberately attempted to cover up the fact that the weapon was brought into ZGS. Furthermore, based on the evidence developed during this investigation, OI:RIII did substantiate that two other guards deliberately failed to report the incident as required.

Case No. 3-98-017

§ 50.5 Deliberate misconduct.

(a) Any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee, who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part; may not:

(1) Engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission, or

(2) Deliberately submit to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Commission, or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, contractor, or subcontractor.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-3415

December 22, 1999

IA 99-060

Mr. John R. Godwin
[HOME ADDRESS DELETED
PURSUANT TO 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-99-025)

Dear Mr. Godwin:

This letter refers to an NRC Office of Investigations (OI) investigation completed on November 26, 1999. During this investigation, the NRC examined the facts and circumstances surrounding a random fitness for duty screening while you were employed by the Tennessee Valley Authority's (TVA) Browns Ferry Nuclear (BFN) Plant. A copy of the synopsis to the OI report is enclosed.

Based on the information developed during the investigation, the NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The OI investigation concluded that you intentionally and deliberately adulterated your urine sample to avoid detection of illegal drug usage. Your submittal of an adulterated sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs. After identification of your intentional and deliberate actions, the licensee took appropriate corrective actions to permanently restrict you from TVA work.

During the conduct of the OI investigation, numerous attempts were made to interview you without success. However, based on discussions with the licensee's Medical Review Officer (MRO), it was determined that your urine sample contained the adulterant potassium nitrite, which blocks the ability to detect substances indicating marijuana use through fitness for duty testing. Although you signed the Drug Testing Custody and Control Form prior to your random drug test of February 9, 1999, certifying that you did not adulterate your urine sample in any manner, the MRO reported that after contacting you regarding the elevated potassium nitrate level, you admitted to using potassium nitrate to subvert the drug screening. The licensee indicated that the human body does not produce potassium nitrite, but this substance could be found in the body as a result of an outside source such as food or medicine. Based on the high concentration of potassium nitrite found in your urine sample and your admission to using the adulterant, the licensee concluded that you attempted to subvert the fitness for duty test.

The NRC and its licensees must be able to rely on the integrity and trustworthiness of employees. Your attempt to subvert TVA's fitness for duty program is unacceptable behavior in the nuclear industry. Therefore, after consultation with the Director, Office of Enforcement, the NRC has decided to issue the enclosed Notice to you based on your violation of regulations regarding deliberate misconduct. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, the violation has been classified at Severity Level III. Copies of the applicable regulation and Enforcement Policy are enclosed for your reference.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of the significant action already taken by the licensee against you. You should be aware that should there be evidence of similar conduct on your part in the future, you may be subject to further enforcement action that could include an order prohibiting your involvement in NRC-licensed activities for a term of years.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, please include in your response information regarding why, in light of your actions in February 1999, the NRC should have confidence that you will adhere to regulatory requirements should you be employed in the nuclear industry in the future. If you believe any information concerning this matter is inaccurate, if you wish to provide additional information that you believe is important to our full understanding of this matter, or if you contest the violation, please include this in your response.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter, with your address removed, and your response will be placed in the Public Document Room (PDR) 45 days after the date of this letter unless you provide sufficient basis to withdraw this letter. Upon placement of these documents in the PDR, a copy of this enforcement action will also be provided to TVA.

Questions concerning this letter may be addressed to Mr. Ken Barr, Chief, Plant Support Branch, Division of Reactor Safety, at 404-562-4653, or Mrs. Anne Boland, Enforcement Officer, Enforcement and Investigations Coordination Staff, at 404-562-4421.

Sincerely,

Luis A. Reyes
Regional Administrator

Enclosures:

1. Notice of Violation
2. Synopsis to OI Report No. 2-99-025
3. 10 CFR 50.5, Deliberate Misconduct
4. Enforcement Policy

CERTIFIED MAIL NO. P 154 568 132
RETURN RECEIPT REQUESTED

J. Godwin

3

cc: w/encls 1 and 2 only w/HOME ADDRESS DELETED:
(HOLD FOR 45 DAYS - EICS ACTION)

Tennessee Valley Authority
Mr. J. A. Scalice
Chief Nuclear Officer and
Executive Vice President
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

NOTICE OF VIOLATION

Mr. John R. Godwin

IA 99-060

During an NRC Office of Investigations investigation completed on November 26, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions", NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(2) states, in part, that any employee or contractor of a licensee may not deliberately submit to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC.

Contrary to the above, on February 9, 1999, you deliberately submitted information (i.e., a urine sample in response to a random drug screening) which you knew to be inaccurate in some respect material to the NRC. Specifically, you submitted a urine sample that contained potassium nitrite, which blocks the ability to detect substances indicating marijuana use through fitness for duty testing. The human body does not produce potassium nitrite, and the identification of this substance at a concentration found in your urine sample is considered an attempt to subvert the fitness for duty test. The submittal of this sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, John R. Godwin is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, Atlanta Federal Center, 61 Forsyth St., SW, Suite 23T85, Atlanta, Georgia, 30303, marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Because your response will be placed in the NRC Public Document Room (PDR) unless you provide sufficient basis to withdraw this letter, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 22 day of December 1999
NUREG-0940, PART 1

B-23

ENCLOSURE 1



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 22, 1999

IA 99-048

Mr. Michael Hibbens
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC Office of Investigations Report 4-1999-016)

Dear Mr. Hibbens:

This refers to the investigation completed on June 22, 1999, by the NRC Office of Investigations (OI) and the predecisional enforcement conference held with Professional Service Industries, Inc. (PSI), which you attended, on August 24, 1999. The conference was conducted to discuss apparent violations involving work activities you and others performed for PSI at a temporary jobsite in Pocatello, Idaho in September 1998. You were interviewed by OI on May 5, 1999, as part of the investigation. A copy of the OI report synopsis is enclosed.

Based on the information developed during the investigation and the predecisional enforcement conference, the NRC concluded that you violated 10 CFR 30.10(a)(1) when you caused PSI to be in violation of NRC regulations. Specifically, on September 15, 1998, after the last radiographic shot was completed, you deliberately failed to have the radiographer present to terminate the last shot so you cranked in the source, surveyed, and locked the camera which caused PSI to be in violation of 10 CFR 34.46. Also on September 15, 1999, after the last radiographic shot was completed, you deliberately failed to maintain constant surveillance of the radiographic camera when you left the area to go to the truck, which caused PSI to be in violation of 10 CFR 20.1801 and 10 CFR 20.1802. According to your statements, you were well aware that a radiographer's assistant operating the camera without a certified radiographer present and failure to maintain constant surveillance of the radiographic camera were violations of PSI's license requirements. Although there were no actual safety consequences as a result of these violations, the NRC considers these matters and your actions of significant concern. As a result of your actions, the NRC is issuing a Notice of Violation and Proposed Imposition of Civil Penalties to your employer. A copy of that action is enclosed.

As an individual engaged in licensed activities, the NRC must have confidence in your personal integrity and your ability to conduct these activities in accordance with NRC requirements. Therefore as a result of your actions, a Notice of Violation (Notice) is being issued to you. Specifically, your deliberate failure to have a radiographer present while you cranked in the source, surveyed and locked the camera has been categorized as a Severity Level III violation and your deliberate failure to maintain constant surveillance of the radiographic camera when you left the area has been categorized as a Severity Level IV violation in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, Revision 1.

At this time, the NRC is issuing the enclosed Notice to emphasize the importance of compliance with NRC requirements. However, you should be aware that a violation of 10 CFR 30.10; "Deliberate Misconduct," allows the issuance of orders and other civil sanctions directly to unlicensed persons who, through their deliberate misconduct, cause a licensee to be in violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, or training instruction. An order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC-licensed facilities. A violation of this regulation as set forth in 10 CFR 30.10, may also lead to criminal prosecution.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved were already adequately addressed during the predecisional enforcement conference on August 24, 1999. The corrective action included extensive retraining with emphasis on the two-person rule, security of licensed material, and duties and responsibilities of an assistant radiographer. Therefore, you are not required to respond to this letter unless the description herein does not accurately reflect the corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

All final NRC documents, including the final OI investigation report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of information in accordance with the FOIA.

In accordance with 10 CFR 2.790 of the NRC's Rules of Practice, a copy of this letter (with your home address deleted), the Notice and your response, if you choose to send one, will be placed in the NRC's Public Document Room.

Sincerely,



Carl J. Paperiello
Deputy Executive Director
for Materials, Research and State Programs

Enclosures: 1. Notice of Violation
2. OI Report Synopsis
3. Notice of Violation and Proposed Imposition of Civil Penalty (EA 99-194)

NOTICE OF VIOLATION

Mr. Michael Hibbens
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

IA 99-048

During an NRC OI investigation completed on June 22, 1999, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, Revision 1, the violations are listed below:

1. 10 CFR 30.10(a)(1) states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes the licensee to be in violation of any regulation or condition of any license issued by the Commission.

10 CFR 34.46 requires that whenever a radiographer's assistant uses radiographic exposure devices, associated equipment or sealed sources or conducts radiation surveys required by section 34.49(b) to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include: (a) the radiographer's physical presence at the site where the sealed sources are being used, (b) the availability of the radiographer to give immediate assistance if required, and (c) the radiographer's direct observation of the assistant's performance of the operations referred to in this section.

Contrary to the above, on September 15, 1998, Michael Hibbens, a Professional Services Industries, Inc. radiographer's assistant, deliberately operated a radiographic exposure device and conducted radiation surveys without the personal supervision of the radiographer while at a temporary jobsite in Pocatello, Idaho, following the last shot. The radiographer was not available to give immediate assistance if required and did not directly observe the assistant's performance of radiographic operations. (01013)

This is a Severity Level III violation (Supplement VI).

2. 10 CFR 30.10(a)(1) states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes the licensee to be in violation of any regulation or condition of any license issued by the Commission.

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on September 15, 1998, Michael Hibbens deliberately did not secure from unauthorized removal or access a locked Amersham Model 680 radiographic exposure device that contained a sealed source of about 60 curies of

cobalt-60 that was located in a large bay area at Eaton Metal Products, Pocatello, Idaho, an unrestricted area. Nor did he maintain constant surveillance of this material to prevent access by unauthorized personnel. This area was an unrestricted area in that two (2) members of the general public were able to cross the radiation area boundary unchallenged. (02014)

This is a Severity Level IV violation (Supplement VI).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct and prevent recurrence, and the date when full compliance was achieved was already adequately addressed during the predecisional enforcement conference on August 24, 1999. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect the corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be placed in the NRC Public Document Room (PDR). Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Dated this nd 22 day of October 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

December 20, 1999

IA 99-059

Jorge A. Labarraque
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-1998-033)

Dear Mr. Labarraque:

This refers to the investigation completed by the NRC Office of Investigations (OI) on March 26, 1999, at the United States Enrichment Corporation's (Corporation's) Paducah Gaseous Diffusion Plant. Based on the findings of the investigation, an apparent violation was identified involving discrimination against the former Manager of Quality Systems (Manager of QS) at the Paducah facility. On May 18, 1999, the NRC provided a copy of the synopsis of the OI report and a summary of the relevant facts to you. A closed, transcribed, predecisional enforcement conference was held on June 30, 1999, in the NRC Region III office between representatives of the Corporation, including you, and NRC representatives.

After a review of the information developed during the investigation, the information provided during the predecisional enforcement conference, and the information provided subsequent to the conference, including information provided by the Manager of QS in a letter dated July 17, 1999, and information provided by you and the Corporation in separate letters dated July 23, 1999, the NRC has determined that you engaged in deliberate misconduct in taking certain actions that affected the Manager of QS. These actions were in violation of the Commission's requirements in 10 CFR 76.7, "Employee Protection."

The Manager of QS had raised nuclear safety concerns. Among other issues, he had informed you that the Paducah Plant Quality Assurance Plan (QAP) did not incorporate all of the requirements of ASME NQA-1, "Quality Assurance Program for Nuclear Facilities." The Manager of QS also told you that the assignment of field surveillance activities to the Quality Systems Group would have a negative impact upon the Group's performance of their primary quality assurance plan responsibilities. These primary responsibilities included auditing vendors, dedicating commercial grade components, and conducting receipt inspections of new materials. Subsequently, you transferred the Manager of QS from a managerial position in the Safety, Safeguards, and Quality Department to a non-managerial position in the Training Department on August 10, 1998.

At the predecisional enforcement conference, the Corporation's representatives, including you, stated that the Manager of QS was transferred due to legitimate performance considerations. The NRC recognizes that the Corporation can assign, transfer, rate, or discipline its employees for legitimate reasons. However, the NRC concluded, based on the record developed in this matter, that performance considerations were not the only reason the Manager of QS was transferred. The NRC determined that the decision to transfer the Manager of QS was due, in part, to his participation in protected activities.

By discriminating against the Manager of QS for raising safety concerns, you deliberately caused the Corporation to be in violation of NRC requirements. As such, you personally violated 10 CFR 76.10(a)(1) (deliberate misconduct rule) which specifies, in part, that any employee of the Corporation may not engage in deliberate misconduct that causes the Corporation to be in violation of any rule, regulation, or order issued by the Nuclear Regulatory Commission.

Since the adverse employment action was taken against the Manager of QS by you, a mid-level plant management official, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level II. A copy of the Notice of Violation and Proposed Imposition of Civil Penalty issued to the Corporation is enclosed.

You should be aware that NRC regulations allow the issuance of civil sanctions, such as a Notice of Violation, directly against unlicensed persons who engage in deliberate misconduct causing a violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, or training instruction. An Order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC licensed facilities. The NRC gave consideration to the issuance of an Order in this case. However, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation and refrain from issuing such an Order. Nonetheless, you should be aware that violations in the future of the deliberate misconduct rule may result in orders prohibiting your involvement in NRC-licensed activities and may be referred to the Department of Justice for possible criminal prosecution.

You are required to respond to this letter within 30 days of the date of this letter, and you should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (with your home address removed) will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any

J. Labarraque

-3-

personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,



J. E. Dyer
Regional Administrator

Docket No. 70-7001
Certificate No. GDP-1

Enclosures: 1. Notice of Violation
2. Notice of Violation and Proposed Imposition of
Civil Penalty - \$88,000 to the Corporation

cc w/enclosures: **WITH HOME ADDRESS REMOVED:**

J. N. Adkins, USEC
A.H. Gutterman, Esq.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION

Jorge A. Labarraque
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790(a)]

IA 99-059

During an NRC investigation completed on March 26, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (64 FR 61142), the violation is listed below:

10 CFR 76.10(a)(1) provides, in part, that any employee of the United States Enrichment Corporation (the Corporation) may not engage in deliberate misconduct that causes or, but for detection, would have caused, the Corporation to be in violation of any rule or regulation issued by the Commission.

10 CFR 76.7(a) prohibits, in part, discrimination by the Corporation against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions or privileges of employment. The protected activities were established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include providing the Corporation with information about nuclear safety at an NRC-regulated facility.

Contrary to the above, on August 10, 1998, you engaged in deliberate misconduct that caused the United States Enrichment Corporation to be in violation of 10 CFR 76.7(a), in that you discriminated against the Manager of Quality Systems at the Paducah Gaseous Diffusion Plant as a result of his engaging in protected activity. Specifically, you transferred the Manager of Quality Systems from a managerial position in the Safety, Safeguards, and Quality Department to a non-managerial position in the Training Department at the Paducah Plant. The transfer occurred, at least in part, because he had raised nuclear safety concerns, including that the implementation of the Paducah Plant Quality Assurance Program could be adversely impacted if you continued to require the Quality Systems Group to perform in-plant surveillances, and that the Paducah Plant was not implementing all of the requirements of ASME NQA-1, "Quality Assurance Program for Nuclear Facilities." (01012)

This is a Severity Level II violation (Supplement VII).

Pursuant to the provisions of 10 CFR 76.70, Mr. Jorge A. Labarraque is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, IL 60532-4351, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action

as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 20th day of December 1999.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 3, 1999

IA 99-052

Raymond E. Landrum
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-1998-012)

Dear Mr. Landrum:

This refers to the investigation conducted by the NRC Office of Investigations (OI) between March 10 and October 15, 1998, at the Commonwealth Edison Company's (ComEd's) Zion Generating Station. Based on the findings of the investigation, an apparent violation was identified involving discrimination by ComEd against a Senior Reactor Operator for raising nuclear safety issues. The synopsis of the OI report and a summary of relevant facts were provided to you by letter dated June 10, 1999, and a closed, transcribed, predecisional enforcement conference (PEC) was held with ComEd and you in the NRC Region III office on July 7, 1999.

After review of the information developed during the investigation, the information provided during the enforcement conference, and the information provided by ComEd in a letter dated July 22, 1999, the NRC has determined that as Shift Operations Supervisor (SOS), you engaged in deliberate misconduct in taking certain actions that affected a Senior Reactor Operator (SRO) who raised nuclear safety concerns. These actions were in violation of the Commission's requirements in 10 CFR 50.7 (Employee Protection). Specifically, as a result of the SRO's having recommended that a component cooling water (CCW) pump be removed from service because of an oil leak and raising a concern about the performance of a safety-related, diesel generator load sequencing timer, you deferred the SRO's participation in the shift manager qualification process (which he had previously been instructed to begin by a prior SOS) and lowered the SRO's performance appraisal evaluation which had been prepared by the SRO's shift manager.

At the PEC, you and the ComEd representatives presented information indicating that during 1997, ComEd management recognized a need to raise performance standards of the operating employees at the Zion Station and stated that the SRO was not removed from the shift manager training program. Rather, management delayed his entry into that program because management believed he was not ready and he needed to develop additional skills before he could enter the program. You and the ComEd representatives also stated that his performance did not warrant the rating initially assigned by the SRO's previous supervisor. As the basis for this contention, you and ComEd representatives asserted that the SRO did not consider alternatives in his decision-making process, such as refusing to consider categorizing the CCW pump as inoperable rather than taking the pump out of service. You and ComEd representatives also asserted that the SRO did not follow-up to obtain answers to his questions

about the load sequencing timer. While the ComEd representatives and you asserted that the actions taken against the SRO were for legitimate business reasons, the examples of the SRO's performance weaknesses cited by you and ComEd as the basis for the employment actions were related to the raising of nuclear safety concerns, and therefore, protected. The NRC recognizes that engaging in protected activities does not shield an employee against legitimate adverse employment actions. However, in this case, the NRC does not agree with you or ComEd that the SRO's handling of the safety concerns noted above demonstrate the performance weaknesses asserted by you and ComEd. Therefore, the NRC has concluded that the actions taken against the SRO were due in part to his participation in activities protected by 10 CFR 50.7. By discriminating against the SRO for raising safety concerns, you deliberately caused ComEd to be in violation of NRC requirements. As such, you personally violated 10 CFR 50.5(a) which specifies that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order issued by the Nuclear Regulatory Commission. Since the adverse employment actions were taken against the SRO by you, a mid-level plant management official, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level II.

You should be aware that NRC regulations allow the issuance of civil sanctions, such as a Notice of Violation, directly against unlicensed persons who engage in deliberate misconduct causing a violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, or training instruction. An Order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC licensed facilities. The NRC gave consideration to the issuance of an Order in this case. However, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation and refrain from issuing such an Order. Nonetheless, you should be aware that violations in the future of the deliberate misconduct rule may result in orders prohibiting your involvement in NRC-licensed activities and may be referred to the Department of Justice for possible criminal prosecution.

You are required to respond to this letter within 30 days of the date of this letter, and you should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (with your home address removed) will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any

R. Landrum

-3-

personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,



J. E. Dyer
Regional Administrator

Dockets No. 50-295; 50-304
Licenses No. DPR-39; DPR-48

Enclosures: 1. Notice of Violation
2. Letter to ComEd

cc w/encls **WITH HOME ADDRESS REMOVED:**
O. D. Kingsley, ComEd

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION

Raymond E. Landrum
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

IA 99-052

During an NRC investigation completed between March 10 and October 15, 1998, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(1) provides, in part, that any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule or regulation issued by the Commission.

10 CFR 50.7(a) prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions or privileges of employment. The protected activities were established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include providing a Commission licensee with information about nuclear safety at an NRC licensed facility.

Contrary to the above, during October and November, 1997, you engaged in deliberate misconduct that caused the Commonwealth Edison Company to be in violation of 10 CFR 50.7, in that you discriminated against a Senior Reactor Operator (SRO) employed by the licensee as a result of his engaging in protected activity. Specifically, the SRO engaged in protected activities on October 14, 1997, when the SRO recommended that a component cooling water pump be taken out-of-service for trouble-shooting and also during October 1997, when the SRO raised a question about the design performance of a diesel generator load sequencing timer. Based in part on these protected activities, on October 24, 1997, you lowered the SRO's performance rating and during October - November 1997 you deferred the SRO's participation in the shift manager qualification process. (01012)

This is a Severity Level II violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Mr. Raymond E. Landrum is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, IL 60532-4351, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 3rd day of November 1999.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 3, 1999

IA 99-003

Mr. Gary Pageau
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: NOTICE OF VIOLATION
(NRC OI Investigation 1-98-005)

Dear Mr. Pageau:

This refers to the investigation conducted by the NRC Region I Office of Investigations (OI) at North Atlantic Energy Service Corporation's (NAESCO) Seabrook Station. Based on the findings of the OI investigation, apparent violations were identified involving: (1) discrimination by Williams Power Corporation (WPC), a contractor of NAESCO, against an electrician for raising safety issues regarding electrical wiring in the control panel for the control building air conditioning (CBA) system; (2) creation of an inaccurate record by WPC regarding work completed on the CBA system; and (3) the failure to promptly correct the incorrectly terminated cables of the CBA system. The synopsis of the subject OI report was forwarded to you with our letter, dated March 16, 1999. Our subsequent letter, dated April 21, 1999, provided a summary of the facts that led the NRC to conclude that violations may have occurred. On June 2, 1999, a predecisional enforcement conference (conference) was conducted with you in the NRC Region I office, to discuss the apparent violations identified during the investigation, their causes, and your corrective actions. The violations were also discussed with your employer, Williams Power Corporation, and NAESCO during a conference, in which you participated, on the same date.

After review of the information developed during the investigation, the information provided during the conferences, and other information provided subsequent to the conferences, including the additional information provided in a letter submitted by your attorney on your behalf dated June 15, 1999, the NRC has concluded that you engaged in deliberate misconduct while acting as a foreman for WPC by selecting a WPC electrician for a layoff, at least in part, in retaliation for his having raised a safety concern. Specifically, the WPC electrician identified that two electrical conductors in the CBA control panel were terminated in a configuration opposite that shown in the applicable design documents. The electrician first raised this concern to you, and later brought the discrepancy to the attention of a NAESCO quality control (QC) inspector on January 7, 1998. Subsequently, on January 16, 1998, you, while acting in your supervisor's absence, selected this specific electrician for a layoff.

At the conference, you contended that the electrician's raising of the safety concern was not a factor in his selection for layoff, noting that there were legitimate reasons for the action. While legitimate reasons supporting the layoff may exist, the NRC has concluded, based on the evidence developed during the OI investigation and the information provided at the enforcement conference, that the layoff was motivated, at least in part, by the individual's engagement in protected activity. Specifically, the NRC has concluded that you selected the electrician for the layoff at least in part in retaliation for the manner in which he raised the wiring discrepancy; i.e. by bringing it to the attention of the QC Inspector. As such, the NRC has concluded that the electrician was discriminated against for raising a safety concern which constitutes a violation of 10 CFR Part 50.7.

By discriminating against the electrician for raising a safety concern, you deliberately caused NAESCo and WPC to be in violation of NRC requirements. As such, you personally violated 10 CFR 50.5(a) which specifies that any employee of a contractor of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order issued by the Nuclear Regulatory Commission. Given that you were acting as a first line supervisor when you selected the electrician for the layoff, the violation, which is set forth in the enclosed Notice of Violation (Notice), is categorized at Severity Level III in accordance with the NRC Enforcement Policy, "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600 (Enforcement Policy).

You should be aware that NRC regulations allow the issuance of civil sanctions, such as a Notice of Violation, directly against unlicensed persons who engage in deliberate misconduct, causing a violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure or training instruction. An Order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC licensed facilities. The NRC gave consideration to the issuance of an Order in this case. However, after consultation with the Director, Office of Enforcement, I have decided to issue the enclosed Notice of Violation and refrain from issuing such an Order. In reaching this decision, we considered that you were an acting supervisor. In addition, we considered the information provided during the enforcement conference by a number of electrical workers that appeared to indicate that you have in the past been supportive of workers raising safety concerns to you. Nonetheless, we emphasize that an employee has an absolute right to raise nuclear safety concerns, including raising them directly with QC inspectors, and that discrimination against an individual for raising a safety concern in the future may result in more significant enforcement action.

Based on the information provided at the conference and on further evaluation of the results of the OI investigation, the NRC has concluded that no violations of 10 CFR 50.9, "Completeness and Accuracy of Information," or 10 CFR 50, Appendix B, Criterion XVI, "Corrective Action," occurred. Specifically, the NRC concluded that, because the wiring discrepancy was noted in the work document, the documentation of the CBA control panel work activities was accurate. Additionally, because the wiring discrepancy was corrected before the CBA system was returned to service, the NRC concluded that the corrective actions for the discrepant condition were not untimely. However, the failure to terminate the conductors in accordance with the applicable design document, and the failure to generate an Adverse Condition Report (ACR) for the wiring discrepancy by the end of the day on which it

Mr. Gary Pageau

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was discovered, constituted violations of requirements contained in Seabrook site procedures. These violations were of minor significance and are not subject to formal enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your home address redacted, its enclosures, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy information so that it can be placed in the PDR without redaction.

If you have any questions or comments, please contact Mr. Clifford Anderson at (610) 337-5227.

Sincerely,



Hubert J. Miller
Regional Administrator

Enclosures:

1. Notice of Violation
2. Letter and Notice of Violation and Proposed Imposition of Civil Penalty to North Atlantic Energy Services Company

cc w/encls:

Mr. T. Feigenbaum, Executive Vice President and Chief Nuclear Officer, NAESCo
Mr. Kenneth Robuck, President, Williams Power Corporation

ENCLOSURE 1

NOTICE OF VIOLATION

Mr. Gary Pageau

IA 99-003

During an investigation conducted by the NRC Office of Investigations (OI) at the Seabrook Station between January 29, 1998, and May 27, 1998, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5 requires, in part, that any employee of a licensee, or any employee of a contractor of a licensee, may not engage in deliberate misconduct that causes a licensee to be in violation of any NRC requirement.

10 CFR 50.7 prohibits, in part, discrimination by a Commission licensee or a contractor of a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. The activities which are protected include, but are not limited to, reporting of safety concerns by an employee to his employer.

Contrary to the above, on January 16, 1998, you engaged in deliberate misconduct that caused North Atlantic Energy Services Corporation, an NRC licensee, to be in violation of 10 CFR 50.7, in that you discriminated against an electrician employed by Williams Power Corporation at the licensee's Seabrook Station facility, as a result of his engaging in protected activity. Specifically, you retaliated against the electrician by selecting him for a layoff at least in part because he had raised a concern on January 7, 1998, to a licensee Quality Control inspector regarding a wiring discrepancy in the control panel of the control building air-conditioning (CBA) system, a safety-related system.

This violation is classified at Severity Level III (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, and (3) the corrective steps that will be taken to avoid further violations. Your response may reference or include previous correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand

for Information may be issued as to why you should not be precluded in the future from involvement in NRC licensed activities, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

If you contest this enforcement action, you should also provide a copy of your response to the Deputy Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy information so that it can be placed in the PDR without redaction. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy).

Dated this 3rd day of August 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

July 8, 1999

IA 99-030

Mr. Bradley K. Sherwin
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT 030-14016/98001(DNMS) AND OFFICE OF
INVESTIGATION REPORT 3-1998-034)

Dear Mr. Sherwin:

This refers to the NRC inspection completed on August 20, 1998, and an NRC Office of Investigations (OI) investigation completed on March 23, 1999. During these reviews, the NRC examined the facts and circumstances surrounding your work activities performed for Testing Engineers & Consultants, Inc., during July 1998. You were interviewed by OI on November 18, 1998, as part of the investigation. Copies of the inspection results and the OI report synopsis are enclosed.

Based on the information developed during the inspection and investigation, the NRC concluded that you deliberately violated 10 CFR 30.10 (a)(1) and (2) when you provided inaccurate information to the NRC and caused the licensee (i.e., your employer) to be in violation of NRC regulations. Specifically, you provided inaccurate and incomplete information to NRC inspectors regarding a gauge used at a temporary jobsite in Saginaw, Michigan. You stated that you returned the gauge to the Lansing office every evening for storage when in fact you stored the gauge at your residence. In addition, an NRC inspector observed that you left a gauge unattended in an unrestricted area at a temporary jobsite. As a result of your actions, the NRC is issuing a Notice of Violation and Proposed Imposition of Civil Penalties to your employer. A copy of that action is enclosed.

The NRC acknowledges that the gauge was left unattended for a very short time; however, this does not negate the fact that you were aware of the license requirements and knew that this was unacceptable. More significantly, you provided false information to the NRC inspectors. This information was material in that it involved the location of licensed material during an ongoing inspection. Although there were no actual safety consequences as a result of these violations, the NRC considers this a matter of significant regulatory concern. As an individual engaged in licensed activities, the NRC must have confidence in your personal integrity and your ability to conduct these activities in accordance with NRC requirements. Therefore, this violation has been categorized as Severity Level III in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, Revision 1.

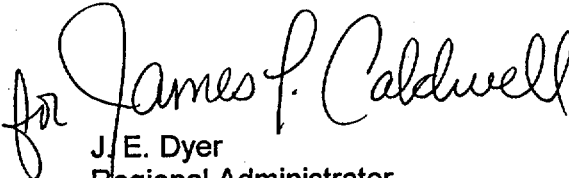
At this time, the NRC is issuing the enclosed Notice of Violation to emphasize the importance of compliance with NRC requirements. However, you should be aware that a violation of 10 CFR 30.10, "Deliberate Misconduct," allows the issuance of orders and other civil sanctions directly to unlicensed persons who, through their deliberate misconduct, cause a licensee to be in violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, or training instruction. An order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC-licensed facilities. A violation of this regulation as set forth in 10 CFR 30.10, may also lead to criminal prosecution.

You are required to respond to this letter and Notice and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions planned to prevent recurrence.

All final NRC documents, including the final OI investigation report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of information in accordance with the FOIA.

In accordance with 10 CFR 2.790 of the NRC's Rules of Practice, documents compiled for enforcement purposes are placed in the NRC's Public Document Room (PDR). A copy of this letter (with your home address deleted) and the Notice and your response will be placed in the PDR.

Sincerely,


J. E. Dyer
Regional Administrator

Docket No. 030-14016
License No. 21-18668-01

Enclosures: 1. Notice of Violation
2. OI Report Synopsis
3. Inspection Results
4. Notice of Violation and Proposed Imposition of Civil Penalty (EA 99-097)

cc w/enclosure 1 only: Katherine Banicki, President
Testing Engineers & Consultants, Inc.
1333 Rochester Road
Troy, MI 48099

NOTICE OF VIOLATION

Mr. Bradley K. Sherwin
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

IA 99-030

During an NRC inspection completed on August 20, 1998, and an NRC Office of Investigations (OI) investigation completed on March 23, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, Revision 1, the violation is listed below:

10 CFR 30.10(a)(1) states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes the licensee to be in violation of any regulation or condition of any license issued by the Commission. In addition, 10 CFR 30.10(a)(2) requires, in part, that any employee of a licensee may not deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on July 28, 1998, Bradley K. Sherwin, an employee of a licensee:

1. Engaged in deliberate misconduct that caused the licensee to be in violation of any regulation or condition of any license issued by the Commission. Specifically, Bradley K. Sherwin knowingly failed to secure from unauthorized removal or limit access to a moisture density gauge containing 8 millicuries (.30 gigabecquerels) of cesium-137 and 40 millicuries (1.48 gigabecquerels) of americium-241, located at a temporary jobsite in Saginaw, Michigan, an unrestricted area, nor did Bradley K. Sherwin control and maintain constant surveillance of this licensed material.
2. Deliberately submitted to the NRC information that he knew to be incomplete or inaccurate in some respect material to the NRC. Specifically, on July 28, 1998 and August 12, 1998, Bradley K. Sherwin provided information to the NRC during a routine inspection that was not complete and accurate in all material respects in that he told NRC inspectors that between July 8 and 27, 1998, he returned a moisture density gauge to the office at the end of each day when in fact the gauge was stored at his residence. This information is material because it had the potential to influence the NRC as to whether a violation of NRC requirements had occurred.

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Mr. Bradley Sherwin is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 161c of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information).

Dated this 8th day of July 1999

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations, Region III, on August 24, 1998, regarding an allegation that an engineer for Testing and Engineering Consultants (TEC) deliberately failed to secure a density gauge, willfully failed to properly store the gauge, and deliberately made a material false statement to an NRC inspector.

Based upon the evidence developed during the investigation, it was determined that the engineer for TEC deliberately failed to secure a density gauge. It was determined that he did not willfully fail to properly store the gauge; however, it was determined that he deliberately made a material false statement to an NRC inspector.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-3415

November 23, 1999

IA 99-055

Mr. Ross H. Stromberg
[HOME ADDRESS REMOVED
PER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-99-022)

Dear Mr. Stromberg:

This letter refers to an NRC Office of Investigations (OI) investigation completed on October 14, 1999. During this investigation, the NRC examined the facts and circumstances surrounding a random fitness for duty screening while you were employed by General Electric at the Tennessee Valley Authority's (TVA) Browns Ferry Nuclear Plant in October 1998. You were interviewed on September 7, 1999, by OI as part of the investigation. A copy of the synopsis to the OI report is enclosed.

Based on the information developed during the investigation, the NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The OI investigation concluded that you deliberately adulterated your urine sample during a random drug screening on October 15, 1998, to avoid detection for illegal drug usage. Your submittal of an adulterated sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs. After identification of your deliberate actions, the licensee took appropriate corrective actions to deny your unescorted access privilege to the facility, and placed your name in the Personnel Automated Data System.

During your OI interview, you denied the use of illegal drugs or that your actions represented an attempt to subvert the fitness for duty testing program while employed at the Browns Ferry Nuclear Plant. In addition, your signature on the Drug Testing Custody and Control Form during the random drug testing of October 15, 1998, certified that you did not adulterate your urine sample in any manner. Nonetheless, based on discussions with the licensee's Medical Review Officer (MRO), it was determined that your urine sample contained the adulterant potassium nitrite, which blocks the ability to detect substances indicating marijuana use through fitness for duty testing. The licensee indicated that the human body does not produce potassium nitrite, but this substance could be found in the body as a result of an outside source such as food or medicine. However, based on the high concentration of potassium nitrite found in your urine sample, the licensee concluded that you attempted to subvert the fitness for duty test.

The NRC and its licensees must be able to rely on the integrity and trustworthiness of employees, especially those in a supervisory capacity. Your attempt to subvert TVA's fitness for duty program is unacceptable behavior in the nuclear industry. Given your responsibilities as a supervisor for General Electric at the Browns Ferry facility, your actions were particularly egregious because they indicated a deliberate lack of regard for NRC requirements. Therefore, after consultation with the Director, Office of Enforcement, the NRC has decided to issue the enclosed Notice to you based on your violation of regulations regarding deliberate misconduct.

In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), 64 *Federal Register* 61142, issued on November 9, 1999, the violation has been classified at Severity Level III. Copies of the applicable regulation and Enforcement Policy are enclosed for your reference.

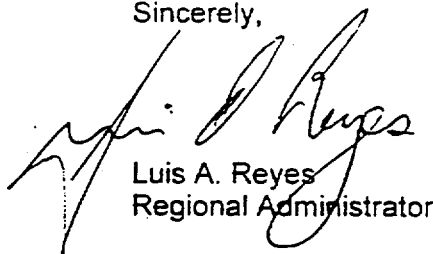
In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of the significant action already taken by the licensee against you. You should be aware that should there be evidence of similar conduct on your part in the future, you may be subject to further enforcement action that could include an order prohibiting your involvement in NRC-licensed activities for a term of years.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, please include in your response information regarding why, in light of your actions in October 1998, the NRC should have confidence that you will adhere to regulatory requirements should you be employed in the nuclear industry in the future. If you believe any information concerning this matter is inaccurate, if you wish to provide additional information that you believe is important to our full understanding of this matter, or if you contest the violation, please include this in your response.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter, with your address removed, and your response will be placed in the Public Document Room (PDR) 45 days after the date of this letter unless you provide sufficient basis to withdraw this letter. Upon placement of these documents in the PDR, a copy of this enforcement action will also be provided to TVA.

Questions concerning this letter may be addressed to Mr. Ken Barr, Chief, Plant Support Branch, Division of Reactor Safety, at 404-562-4653, or Mrs. Anne Boland, Enforcement Officer, Enforcement and Investigations Coordination Staff, at 404-562-4421.

Sincerely,



Luis A. Reyes
Regional Administrator

Enclosures:

1. Notice of Violation
2. Synopsis to OI Report No. 2-99-022
3. 10 CFR 50.5, Deliberate Misconduct
4. Enforcement Policy

CERTIFIED MAIL NO. Z 353 112 071
RETURN RECEIPT REQUESTED

cc: w/encs 1 and 2 only w/HOME ADDRESS DELETED:
(HOLD FOR 45 DAYS - EICS ACTION)

Tennessee Valley Authority
Mr. J. A. Scalice
Chief Nuclear Officer and
Executive Vice President
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

NOTICE OF VIOLATION

Mr. Ross H. Stromberg

IA 99-055

During an NRC Office of Investigations investigation completed on October 14, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," 64 *Federal Register* 61142, the violation is listed below:

10 CFR 50.5(a)(2) states, in part, that any employee or contractor of a licensee may not deliberately submit to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC.

Contrary to the above, on October 15, 1998, you deliberately submitted information (i.e., a urine sample in response to a random drug screening) which you knew to be inaccurate in some respect material to the NRC. Specifically, you submitted a urine sample that contained potassium nitrite, which blocks the ability to detect substances indicating marijuana use through fitness for duty testing. The human body does not produce potassium nitrite, and the identification of this substance at a concentration found in your urine sample is considered an attempt to subvert the fitness for duty test. The submittal of this sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Ross H. Stromberg is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, Atlanta Federal Center, 61 Forsyth St., SW, Suite 23T85, Atlanta, Georgia, 30303, marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Because your response will be placed in the NRC Public Document Room (PDR) unless you provide sufficient basis to withdraw this letter, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 23rd day of November 1999
NUREG-0940, PART I

B-51

ENCLOSURE 1

SYNOPSIS

The U.S. Nuclear Regulatory Commission, Office of Investigations, Region II, initiated this investigation on August 18, 1999, to determine whether a Stone and Webster contract employee at the Tennessee Valley Authority Watts Bar Nuclear Plant attempted to subvert the fitness for duty testing program by adulterating his urine sample.

Based on the evidence developed during the investigation, it was substantiated that the contractor intentionally and deliberately adulterated his urine sample to avoid detection for illegal drug usage.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF~~ Approved on
~~FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION II~~ 11/16/99

Case No. 2-1999-023
NUREG-0940, PART 1

B-52¹

Enclosure 2



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

December 27, 1999

IA 99-061

Mr. Larry E. Taylor
[HOME ADDRESS DELETED]
[PURSUANT TO 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Taylor:

The Nuclear Regulatory Commission (NRC) has received a letter dated December 1, 1999, from the Duke Energy Corporation (Duke Energy), informing us of your confirmed positive test for tetrahydrocannabinol (THC). We plan to place this letter from Duke Energy in your 10 CFR Part 55 docket file.

This confirmed positive test for drugs represents a violation of the NRC's requirements in 10 CFR 55.53(j). The purpose of the Commission's fitness-for-duty requirements is to provide reasonable assurance that the nuclear power plant work environment is free of drugs and alcohol and the effects of these substances on personnel. The use of illegal drugs is a serious matter that could adversely affect an operator's ability to safely and competently perform licensed duties, and undermines the special trust and confidence placed in you as a licensed nuclear reactor plant operator. The violation is categorized as a Severity Level III violation in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, because the use of illegal drugs by licensed reactor operators is a significant regulatory concern. This violation is described in the enclosed Notice of Violation (Notice). Please note that, in accordance with 10 CFR 26.27(b), future similar violations will substantially affect your authorization for unescorted access to the protected area of a licensed facility.

The purpose of this letter is to make clear to you the consequences of your violation of NRC regulations governing fitness-for-duty as a licensed reactor operator. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence in order to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator of a nuclear power facility. After reviewing your response to this Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are placed in the NRC Public Document Room
NUREG-0940, PART 1
B-53

L. Taylor

2

(PDR). A copy of this letter (without Enclosure 2), the enclosed Notice of Violation, and your response, with your address removed, will be placed in the PDR 45 days following the date of this letter unless you provide a sufficient basis to withdraw this violation.

Should you have any questions concerning this action, please contact Harold O. Christensen or George T. Hopper at (404) 562-4638.

Sincerely,



Bruce S. Mallett, Director
Division of Reactor Safety

Docket No. 55-21013
License No. SRO-20592-1

Enclosures: 1. Notice of Violation
2. Letter from Facility Licensee

cc [HOME ADDRESS DELETED] w/ encl 1 only:
(HOLD FOR 45 DAYS-EICS ACTION)
Duke Energy Corporation
Oconee Site
ATTN: Mr. W. R. McCollum
Vice President
7800 Rochester Hwy
Seneca, SC 29672

CERTIFIED MAIL NO. P 343 386 355
RETURN RECEIPT REQUESTED

NUREG-0940, PART 1

B-54

NOTICE OF VIOLATION

Larry E. Taylor

Docket No. 55-21013
License No. SRO-20592-1
IA 99-061

As a result of a notification from the Duke Energy Corporation Oconee Nuclear Station dated December 1, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 55.53(j) prohibits the use, possession, or sale of any illegal drugs and prohibits the licensee from performing activities authorized by a license issued under 10 CFR Part 55 while under the influence of illegal substances that could adversely affect the ability to safely and competently perform licensed duties. "Under the influence" is defined in 10 CFR 55.53(j) to mean that the "licensee exceeded, as evidenced by a confirmed positive test, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR Part 26, Appendix A, of this chapter, or as established by the facility licensee."

Contrary to the above, the licensee violated 10 CFR 55.53(j) as evidenced by the following:

- a. The licensee used an illegal drug - tetrahydrocannabinol (THC) - as evidenced by a confirmed positive test for that drug resulting from a urine sample submitted on October 13, 1999, and
- b. The licensee performed licensed duties during the week of October 11, 1999, and during this time a urine sample was submitted which indicated he was under the influence of THC (01013).

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Larry E. Taylor is hereby required to submit a written statement of explanation to the U. S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, 61 Forsyth Street S. W., Suite 23T85, Atlanta, GA 30303 and marked "Open by Addressee Only" and a copy to the NRC Resident Inspector at Oconee Nuclear Station with a similar marking within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued to show cause why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Because your response may be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 27th day of December



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

September 30, 1999

IA 99-045

Charles H. Tewksbury
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-97-040)

Dear Mr. Tewksbury:

This letter refers to the investigation conducted from October 28, 1997, to September 21, 1998, by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) at the Illinois Power Company's (IPC) Clinton Power Station. The investigation was conducted after IPC notified the NRC on May 6, 1997, that a violation of 10 CFR 50.7, "Employee Protection," may have occurred. IPC conducted a separate investigation into this matter. The investigations determined that during January 1997, you, as a supervisor in the Clinton Power Station Quality Verification (QV) Department, discriminated against a QV inspector in retaliation for the inspector's previous discussions with the NRC about safety-related issues.

The synopsis of the OI report was sent to you by letter dated November 13, 1998. Subsequently, you informed the NRC that a predecisional enforcement conference for this matter would not be requested, and you provided a written response on December 14, 1998. In your response, you denied that you limited or effected anyone's right to contact the NRC. In this connection, you asserted that you equally recommended both the QV inspector and another individual for promotion.

After a review of the information developed during the OI investigation, as well as the information developed during the IPC investigation and the information that you have provided, the NRC has concluded that you engaged in deliberate misconduct in that you discriminated against the QV inspector by not recommending the QV inspector for promotion to the position of lead QV inspector in reprisal for having contacted the NRC. While the NRC does not dispute the fact that you initially wrote a promotion recommendation for the QV inspector, your subsequent recommendation to promote another individual instead of the QV inspector at least in part as a result of the QV inspector having raised nuclear safety concerns to the NRC constituted discrimination. By discriminating against the QV inspector for raising safety concerns, you deliberately caused IPC to be in violation of NRC requirements. As such, you personally violated 10 CFR 50.5(a), which specifies that any employee of an NRC licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation or order issued by the NRC.

This violation of 10 CFR 50.5(a)(1), "Deliberate Misconduct," represents a significant concern to the NRC because it represents retaliation by you, a first line supervisor, against a subordinate employee for discussing safety issues with the NRC. Therefore, the violation has been

categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

The NRC has decided to issue the enclosed Notice of Violation to you in lieu of an order, based, in part, on the disciplinary actions already taken against you by IPC. However, you should be aware that violations in the future of the deliberate misconduct rule may result in more significant enforcement actions, including an order prohibiting your involvement in NRC-licensed activities, and may be referred to the Department of Justice for possible criminal prosecution.

You are required to respond to this letter within 30 days of the date of this letter, and you should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (with your home address removed) will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,



J. E. Dyer
Regional Administrator

Docket No. 50-461
License No. NPF-62

Enclosures: 1. Notice of Violation
2. 12/10/98 IPC Letter
3. Letter and Notice of
Violation to IPC

cc w/encls **WITH HOME ADDRESS REMOVED:**
L. K. Geiler, esq.
J.P. McElwain, IPC

NOTICE OF VIOLATION

Charles H. Tewksbury
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790(a)]

IA 99-045

During NRC investigation conducted by the NRC Office of Investigations, from October 28, 1997, to September 21, 1998, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(1) provides, in part, that any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule or regulation issued by the Commission.

10 CFR 50.7 prohibits, in part, discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include providing the Commission with information about potential violations pertaining to nuclear safety.

Contrary to the above, in January 1997, you engaged in deliberate misconduct that caused the Illinois Power Company, an NRC licensee, to be in violation of 10 CFR 50.7, in that you discriminated against a Quality Verification (QV) Inspector for having engaged in protected activity. Specifically, you did not recommend the QV inspector for promotion to the position of lead QV inspector at least in part because she had previously provided information to the NRC. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, IL 60532-4351, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 30th day of September 1999



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-3415

November 23, 1999

IA 99-054

Mr. John D. Tipton
[HOME ADDRESS REMOVED
PER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-99-023)

Dear Mr. Tipton:

This letter refers to an NRC Office of Investigations (OI) investigation completed on October 15, 1999. During this investigation, the NRC examined the facts and circumstances surrounding a random fitness for duty screening while you were employed by Stone and Webster at the Tennessee Valley Authority's (TVA) Watts Bar Nuclear Plant in November 1998. You were interviewed on September 10, 1999, by OI as part of the investigation. A copy of the synopsis to the OI report is enclosed.

Based on the information developed during the investigation, the NRC concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. Specifically, 10 CFR 50.5(a)(2) prohibits any licensee, employee, or contractor of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC. The OI investigation concluded that you deliberately adulterated your urine sample during a random drug screening on November 9, 1998, to avoid detection for illegal drug usage. A second sample was subsequently taken, which indicated a positive result for an illegal drug. Your submittal of an altered or substituted sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs. After identification of your deliberate actions, the licensee took appropriate corrective actions to deny your unescorted access privilege to the facility.

During your OI interview, you denied the use of illegal drugs or that you attempted to subvert the fitness for duty testing program while employed at the Watts Bar Nuclear Plant. In addition, your signature on the Drug Testing Custody and Control Form during the random drug testing of November 9, 1998, certified that you provided your urine specimen and did not adulterate it in any manner. Nonetheless, based on discussions with the licensee's Medical Review Officer (MRO), your first urine sample temperature was discovered to be outside the acceptable range, indicating that either water was added to the sample or the sample was substituted with one having no evidence of drugs. Laboratory testing of the second urine sample submitted under direct observation indicated a positive result for an illegal drug. TVA concluded that your actions represented an attempt to subvert the fitness for duty test.

The NRC and its licensees must be able to rely on the integrity and trustworthiness of employees, especially those in a supervisory capacity. Your attempt to subvert TVA's fitness for duty program is unacceptable behavior in the nuclear industry. Given your responsibilities as a foreman for Stone and Webster at the Watts Bar facility, your actions were particularly egregious because they indicated a deliberate lack of regard for NRC requirements. Therefore, after consultation with the Director, Office of Enforcement, the NRC has decided to issue the enclosed Notice to you based on your violation of regulations regarding deliberate misconduct. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement

Actions" (Enforcement Policy), 64 *Federal Register* 61141, issued on November 9, 1999, the violation has been classified at Severity Level III. Copies of the applicable regulation and Enforcement Policy are enclosed for your reference.

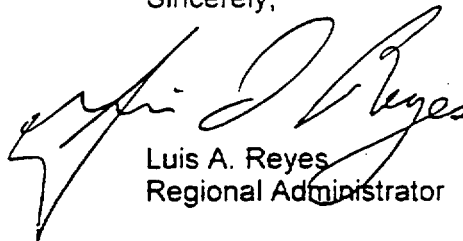
In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of the significant action already taken by the licensee against you. You should be aware that should there be evidence of similar conduct on your part in the future, you may be subject to further enforcement action that could include an order prohibiting your involvement in NRC-licensed activities for a term of years.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, please include in your response information regarding why, in light of your actions in November 1998, the NRC should have confidence that you will adhere to regulatory requirements should you be employed in the nuclear industry in the future. If you believe any information concerning this matter is inaccurate, if you wish to provide additional information that you believe is important to our full understanding of this matter, or if you contest the violation, please include this in your response.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter, with your address removed, and your response will be placed in the Public Document Room (PDR) 45 days after the date of this letter unless you provide sufficient basis to withdraw this letter. Upon placement of these documents in the PDR, a copy of this enforcement action will also be provided to TVA.

Questions concerning this letter may be addressed to Mr. Ken Barr, Chief, Plant Support Branch, Division of Reactor Safety, at 404-562-4653, or Mrs. Anne Boland, Enforcement Officer, Enforcement and Investigations Coordination Staff, at 404-562-4421.

Sincerely,



Luis A. Reyes
Regional Administrator

Enclosures:

1. Notice of Violation
2. Synopsis to OI Report No. 2-99-023
3. 10 CFR 50.5, Deliberate Misconduct
4. Enforcement Policy

CERTIFIED MAIL NO. Z 353 112 072
RETURN RECEIPT REQUESTED

cc: w/encls 1 and 2 only w/HOME ADDRESS DELETED:
(HOLD FOR 45 DAYS - EICS ACTION)

Tennessee Valley Authority

Mr. J. A. Scalice

Chief Nuclear Officer and
Executive Vice President

6A Lookout Place

1101 Market Street

Chattanooga, TN 37402-2801

NOTICE OF VIOLATION

Mr. John D. Tipton

IA 99-054

During an NRC Office of Investigations investigation completed on October 15, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," 64 *Federal Register* 61142, issued November 9, 1999, the violation is listed below:

10 CFR 50.5(a)(2) states, in part, that any employee or contractor of a licensee may not deliberately submit to a licensee information that the person submitting the information knows to be inaccurate in some respect material to the NRC.

Contrary to the above, on November 9, 1998, you deliberately submitted information (i.e., a urine sample in response to a random drug screening) which you knew to be inaccurate in some respect material to the NRC. Specifically, you deliberately altered or substituted your urine sample during a random drug screening as indicated by a urine temperature that was outside the acceptable range. These actions were taken to subvert the fitness for duty test and avoid detection for illegal drug usage. A second sample was subsequently taken which indicated a positive result for an illegal drug. The submittal of these samples was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness for Duty Programs. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, John D. Tipton is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, Atlanta Federal Center, 61 Forsyth St., SW, Suite 23T85, Atlanta, Georgia, 30303, marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Because your response will be placed in the NRC Public Document Room (PDR) unless you provide sufficient basis to withdraw this letter, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 23rd day of November 1999

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B-64

ENCLOSURE 1

SYNOPSIS

The U.S. Nuclear Regulatory Commission, Office of Investigations, Region II, initiated this investigation on August 18, 1999, to determine whether a Stone and Webster contract employee at the Tennessee Valley Authority Watts Bar Nuclear Plant attempted to subvert the fitness for duty testing program by adulterating his urine sample.

Based on the evidence developed during the investigation, it was substantiated that the contractor intentionally and deliberately adulterated his urine sample to avoid detection for illegal drug usage.

NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF Approved on
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION II 11/16/99

Case No. 2-1999-023
NUREG-0940, PART 1

B-65¹

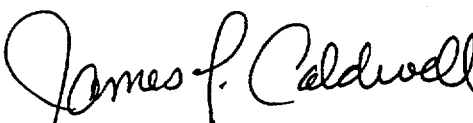
Enclosure 2

Please feel free to contact Mr. Gary L. Shear, Chief, Plant Support Branch, if you have any questions. Mr. Shear can be contacted at toll free telephone number 1-800-522-3025 or (630) 829-9500.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,


for James E. Dyer
Regional Administrator

Docket Nos. 50-440
License Nos. NPF-58

Enclosures: 1. Notice of Violation
2. OI Synopsis
3. Letter to FirstEnergy
4. NRC Enforcement Policy

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Notice of Violation

Kenneth Wierman
[Home Address Deleted
Under 10 CFR 2.790(a)]

IA 99-021

During an NRC inspection and an NRC investigation concluded on January 29, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(2) prohibits an employee of a licensee from deliberately submitting to a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

10 CFR 50.54(q) requires, in part, that a licensee authorized to possess and operate a nuclear power reactor must follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b) and the requirements in 10 CFR Part 50, Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities."

10 CFR Part 50, Appendix E, Section IV.F requires, in part, that the emergency response training program include a description of specialized initial training and periodic retraining to be provided to emergency response organization (ERO) personnel.

The "Emergency Plan for the Perry Nuclear Power Plant" (Emergency Plan), which implements the requirements of 10 CFR 50.54(q), is described in the Perry Operations Manual. Section No. 8.1.2.2, Revision No. 13, Procedure Intent Change (PIC) No. 1, of the Emergency Plan, dated August 14, 1996, requires, in part, that personnel assigned to the ERO, who have specific duties and responsibilities, must receive specialized training for their respective assignments. The Operations Manual also specifies the emergency plan training requirements, and describes the acceptable methods for documenting training that is conducted.

Contrary to the above, on January 14, 1997, Kenneth Wierman was employed as a training instructor at FirstEnergy's Perry Nuclear Power Plant and deliberately submitted information to FirstEnergy that he knew to be incomplete or inaccurate in some respect material to the NRC. Specifically, he completed and signed training records (*i.e.*, Course Completion Packages, Course Completion Package Cover Sheets, and Perry Training Section Course Completion Records) indicating that three specifically named employees attended and completed EP Training Course 0813, "Radiation Monitoring Personnel," a course required by the Perry Emergency Plan on January 14, 1997. However, none of the individuals attended that course or signed the Perry Training Section Course Completion Record for that training course on January 14, 1997. This information was material to the NRC because it demonstrated compliance with 10 CFR 50.54q and 10 CFR Part 50, Appendix E, Section IV.F. (01013).

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Mr. Kenneth Wierman is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the Perry Nuclear Power Plant, within
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30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 10th day of May 1999

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region III (RIII), on January 12, 1998, regarding an allegation that Perry Nuclear Power Plant (Perry) emergency Plan Training Course completion forms had been deliberately falsified.

Based upon the evidence developed during the investigation, it was determined that a Perry Emergency Planning Instructor did deliberately falsify Perry Emergency Plan Training Course completion forms. It was also determined that the same instructor deliberately falsified various names on a number of emergency lesson plan cover sheets.

Case No. 3-1998-005

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
(Assigned by NRC, Add Vol., Supp., Rev.,
and Addendum Numbers, if any.)

NUREG-0940, PART 1
VOL. 18, NO.2

2. TITLE AND SUBTITLE

Enforcement Actions: Significant Actions Resolved
Individual Actions
Semiannual Progress Report
July - December 1999

3. DATE REPORT PUBLISHED

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June	2000

4. FIN OR GRANT NUMBER

5. AUTHOR(S)

Office of Enforcement

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8. PERFORMING ORGANIZATION - NAME AND ADDRESS *(If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)*

Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

9. SPONSORING ORGANIZATION - NAME AND ADDRESS *(If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)*

Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT *(200 words or less)*

This compilation summarizes significant enforcement actions that have been resolved during the period (July - December 1999) and includes copies of Orders and Notices of Violation sent by the Nuclear Regulatory Commission to individuals with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC. The Commission believes this information may be useful to licensees in making employment decisions.

12. KEY WORDS/DESCRIPTORS *(List words or phrases that will assist researchers in locating the report.)*

Wrongdoing

13. AVAILABILITY STATEMENT

unlimited

14. SECURITY CLASSIFICATION

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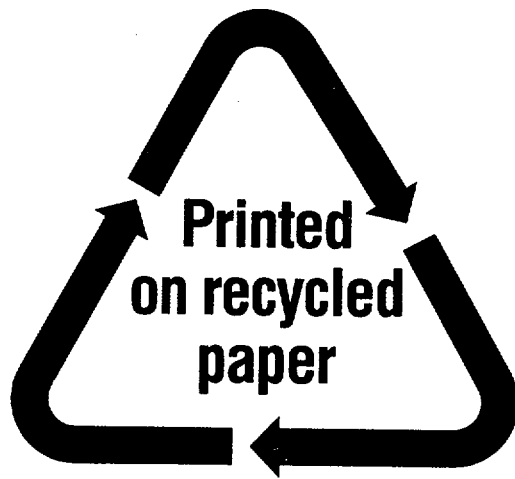
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unclassified

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